Verein KlimaSeniorinnen Schweiz and others v. Switzerland

Zusammenfassung des Entscheids der Grossen Kammer des Europäischen Gerichtshofs für Menschenrechte vom 9. April 2024

erstellt im Auftrag des Vereins KlimaSeniorinnen Schweiz

von

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A. Einleitung

1 Der Europäische Gerichtshof für Menschenrechte (EGMR) stützte seinen Entscheid in Sachen *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*[1] vom 9. April 2024 auf eine über 100 Seiten umfassende, von der Schweiz resp. den Mitgliedstaaten des Europarates anerkannte Fakten- und Rechtslage ab. Mit Blick auf die Beurteilung der Klimazielsetzungen lagen dem Gerichtshof sodann nicht nur die Stellungnahmen der Schweiz, sondern aufgrund des diesbezüglich ähnlichen, parallel beurteilten Falles *Duarte Agostinho and Others v. Portugal and 32 Others*[2] die Stellungnahmen von weiteren 31 Staaten des Europarates vor.

2 Stichtag für die dem Entscheid zugrundeliegenden Tatsachen, den einschlägigen rechtlichen Rahmen und die einschlägige Praxis war der Tag der Beschlussfassung vom 14. Februar 2024. Der EGMR hat sämtliche bis dahin erfolgten nationalen und internationalen Entwicklungen in seine Entscheidfindung miteinbezogen. Das gilt namentlich auch für die Abstimmung vom 18. Juni 2023 über das Bundesgesetz über die Ziele im Klimaschutz, die Innovation und die Stärkung der Energiesicherheit (KIG)[3].

3 Die nachfolgende Darlegung beschränkt sich auf eine zusammenfassende Wiedergabe der Erwägungen der Grossen Kammer des EGMR. Sie enthält sich, abgesehen von der einer Zusammenfassung inhärenten thematischen Gewichtung, sämtlicher Wertungen oder eigener Analysen. Sie soll einem breiten Adressatenkreis ermöglichen, sich mit dem rund 260-seitigen Entscheid sowohl vertieft als auch mit einem überschaubaren Zeitaufwand auseinandersetzen zu können. Grundlage der Zusammenfassung bilden die im Anhang angefügten Entscheidauszüge.

B. Ausgangslage

4 Wesentliche wissenschaftliche Grundlage stellen die Berichte des Zwischenstaatlichen Ausschusses für Klimaänderungen («IPCC») dar. Der IPCC hält fest:

- Die Welt ist nicht auf dem richtigen Weg; die im Rahmen des Pariser Klimaübereinkommens[4] geleisteten Versprechen werden nicht erfüllt (Kluft zwischen den umgesetzten Massnahmen und den Versprechen der Staaten).
- Werden die Ziele des Pariser Klimaübereinkommens verfehlt, führt dies zu erheblichen negativen Auswirkungen auf das Leben und das Wohlergehen der Menschen.

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1 *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* (Grosse Kammer), Verfahrensnr. 53600/20.

2 *Duarte Agostinho and Others v. Portugal and 32 Others* (Grosse Kammer), Verfahrensnr. 39371/20.

3 Bundesgesetz über die Ziele im Klimaschutz, die Innovation und die Stärkung der Energiesicherheit, SR 814.310.

4 Übereinkommen von Paris (Klimaübereinkommen), SR 0.814.012.

– Das Zeitfenster für die Begrenzung der Erderwärmung auf 1,5°C über dem vorindustriellen Niveau schliesst sich rasch. Die Entscheidungen in diesem Jahrzehnt sind von grösster Bedeutung und haben Auswirkungen für Tausende von Jahren.

– Zur Zielerreichung sind die Einhaltung eines CO_2-Budgets und eine Netto-Null-Politik wichtig. Der IPCC hat hierzu globale Emissionsreduktionspfade und ein globales CO_2-Budget berechnet.

5 In der ersten globalen Bestandsaufnahme der COP28[5] vom 13. Dezember 2023 haben die Parteien (auch des Europarates)

– die Notwendigkeit dringender Massnahmen und Unterstützung betont, um das 1,5°C-Ziel in Reichweite zu halten und die Klimakrise in diesem kritischen Jahrzehnt zu bewältigen,

– sich verpflichtet, in diesem kritischen Jahrzehnt auf der Grundlage der besten verfügbaren wissenschaftlichen Erkenntnisse und unter Berücksichtigung der Gerechtigkeit und des Grundsatzes der gemeinsamen, aber unterschiedlichen Verantwortlichkeiten und der jeweiligen Fähigkeiten im Lichte der unterschiedlichen nationalen Gegebenheiten und im Kontext der nachhaltigen Entwicklung und der Bemühungen um die Beseitigung der Armut, schneller zu handeln;

– mit Besorgnis festgestellt, dass die Vertragsparteien, welche Industrieländer sind, in der Zeit vor 2020 sowohl bei den Zielen als auch bei der Umsetzung der Emissionsminderung Lücken aufweisen, und dass der IPCC früher darauf hingewiesen hat, dass Industrieländer ihre Emissionen bis 2020 um 25-40 % unter das Niveau von 1990 senken müssen, was nicht erreicht wurde;

– ihre Besorgnis darüber zum Ausdruck gebracht, dass das CO_2-Budget, das mit dem Erreichen des Temperaturziels des Pariser Klimaübereinkommens im Einklang steht, inzwischen gering ist und rasch aufgebraucht wird, und anerkannt, dass die historischen kumulierten Netto-CO_2-Emissionen bereits etwa vier Fünftel des gesamten CO_2-Budgets für eine 50-prozentige Wahrscheinlichkeit der Begrenzung der globalen Erwärmung auf 1,5°C ausmachen.

6 Die Erkenntnis, dass sich die Folgen der Klimaerwärmung auf die Menschenrechte auswirken, ist nicht neu. Die UNO-Generalversammlung hat das Thema des globalen Klimaschutzes für heutige und zukünftige Generationen seit der Resolution Nr. 43/53 über den Schutz des globalen Klimas für die heutigen und zukünftigen Generationen der Menschheit vom 6. Dezember 1988 fast jedes Jahr auf die Tagesordnung gesetzt und zahlreiche Resolutionen verabschiedet. Auch mehrere nationale Gerichte in Europaratsstaaten haben dies bereits anerkannt (z.B. in Deutschland, den Niederlanden und Belgien).

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5 FCCC/PA/CMA/2023/L.17, 13. Dezember 2023.

C. Die Rolle des Europäischen Gerichtshofs für Menschenrechte im Kontext des Klimawandels

7 Die Massnahmen zur Bekämpfung des Klimawandels und seiner negativen Auswirkungen erfordern in hohem Masse gesetzgeberische Massnahmen. Solche Massnahmen sind in einer Demokratie notwendigerweise von einer demokratischen Entscheidungsfindung abhängig. Ein gerichtliches Eingreifen, auch durch den EGMR, kann die Massnahmen, die von der Legislative und der Exekutive getroffen werden müssen, nicht ersetzen.

8 Eine Demokratie kann jedoch nicht unter Missachtung der Erfordernisse der Rechtsstaatlichkeit auf den Willen der Mehrheit der Wählerinnen und Wähler und der gewählten Vertreterinnen und Vertreter reduziert werden. Die Zuständigkeit der innerstaatlichen Gerichte und des EGMR sind daher komplementär zu den demokratischen Prozessen.

9 Die Aufgabe der Justiz besteht darin, die notwendige richterliche Kontrolle über die Einhaltung der gesetzlichen Bestimmungen – vorliegend: der Europäischen Menschenrechtskonvention (EMRK[6]) – zu gewährleisten. Wenn sich vor dem Gerichtshof erhobene Beschwerden auf Fragen beziehen, die mit der Politik eines Staates verbunden sind, welche Konventionsrechte berühren, ist dieser Gegenstand nicht mehr nur eine Frage der Politik, sondern auch eine Rechtsfrage. In solchen Fällen behält der EGMR seine Zuständigkeit, wenn auch mit erheblicher Zurückhaltung gegenüber dem innerstaatlichen politischen Entscheidungsträger. Der Ermessensspielraum der nationalen Behörden ist nicht unbegrenzt und geht mit einer Kontrolle durch den EGMR einher, der sich vergewissern muss, dass die Wirkungen der angefochtenen nationalen Massnahmen mit der EMRK vereinbar sind.

10 Die Zuständigkeit des EGMR für Rechtsstreitigkeiten im Zusammenhang mit dem Klimawandel kann daher nicht grundsätzlich ausgeschlossen werden. Der EGMR in seiner Rolle als mit der Durchsetzung der Menschenrechte betrautes Rechtsorgan kann nicht ignorieren, dass die weithin anerkannte Unzulänglichkeit der bisherigen staatlichen Massnahmen zur Bekämpfung des Klimawandels eine Verschärfung der nachteiligen Folgen und der sich daraus ergebenden Bedrohungen der Menschenrechte mit sich bringt.

11 Im Kontext des Klimawandels kommt auch der Lastenverteilung zwischen den Generationen besondere Bedeutung zu, und zwar sowohl in Bezug auf die verschiedenen Generationen der derzeit lebenden Menschen, als auch in Bezug auf künftige Generationen. Künftige Generationen werden wahrscheinlich eine immer schwerere Last der Folgen gegenwärtiger Versäumnisse und Unterlassungen bei der Bekämpfung des Klimawandels zu tragen haben. Gleichzeitig haben sie keine Möglichkeit, an den gegenwärtigen Entscheidungsprozessen teilzunehmen. Mit ihrem Engagement im Rahmen des Rahmenübereinkommens der Vereinten Nationen über Klimaänderungen (UNFCCC)[7] sind die Staaten des Europarates die Verpflichtung

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6 Konvention zum Schutze der Menschenrechte und Grundfreiheiten, SR 0.101.

7 Rahmenübereinkommen der Vereinten Nationen über Klimaänderungen, SR 0.814.01.

eingegangen, das Klimasystem zum Wohl heutiger und künftiger Generationen der Menschheit zu schützen (Art. 3 UNFCCC). Die generationenübergreifende Perspektive unterstreicht die den politischen Entscheidungsprozessen innewohnende Gefahr, dass kurzfristige Interessen gegenüber den dringenden Erfordernissen einer nachhaltigen Politikgestaltung überwiegen könnten, was diese Gefahr besonders schwerwiegend macht und die Möglichkeit einer gerichtlichen Überprüfung zusätzlich rechtfertigt.

12 Angesichts der Notwendigkeit, sich mit der akuten Bedrohung durch den Klimawandel zu befassen, und unter Berücksichtigung der allgemeinen Akzeptanz, dass der Klimawandel ein gemeinsames Anliegen der Menschheit ist, lautet die Frage also nicht mehr, ob, sondern wie sich die Menschenrechtsgerichte mit den Auswirkungen von den Folgen des Klimawandels auf die Wahrnehmung der Menschenrechte befassen sollten.

13 Diesbezüglich kann die bestehende, ständige Rechtsprechung des EGMR in Bezug auf andere Umweltprobleme[8], die die Menschenrechte (namentlich: die Gesundheit und das Leben der Menschen) berühren, aufgrund grundlegender Unterschiede[9] nicht unmittelbar auf den Kontext des Klimawandels übertragen werden. Vielmehr ist ein Ansatz zu wählen, der die Besonderheiten des Klimawandels anerkennt und berücksichtigt, und der auf seine spezifischen Merkmale zugeschnitten ist.

D. Kausalität im Kontext des Klimawandels

14 Die Kausalität resp. Fragen der Verursachung haben einen Einfluss auf die Beurteilung des Opferstatus wie auch auf die materiellen Aspekte der Verpflichtungen und der Verantwortung eines Staates. Es sind vier Dimensionen der Kausalität auseinanderzuhalten und zu beurteilen:

- *Zusammenhang zwischen den Treibhausgasemissionen und der daraus resultierenden Anreicherung von Treibhausgasen in der globalen Atmosphäre und den verschiedenen Phänomenen des Klimawandels:* Dies ist eine Frage der wissenschaftlichen Erkenntnis und Bewertung; hier sind die vom IPCC erstellten Berichte von besonderer Bedeutung.
- *Zusammenhang zwischen den negativen Auswirkungen des Klimawandels und deren Auswirkungen auf die Menschenrechte:* Die wissenschaftliche, politische und gerichtliche Anerkennung eines Zusammenhangs zwischen den nachteiligen Auswirkungen des Klimawandels und der Wahrnehmung (verschiedener Aspekte) der Menschenrechte muss vom EGMR berücksichtigt werden. Denn die EMRK ist ein lebendiges Instrument, das im Lichte der heutigen Bedingungen und im

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8 U.a. Schlammlawinen, Erdbeben, giftige Luftverunreinigung, Lärm.

9 Im Kontext des Klimawandels gibt es keine einzelne Schadenquelle. CO_2 an sich ist nicht *per se* schädlich. Die Treibhausgasemissionen kennen keine Grenzen. Die Effekte der globalen Erwärmung sind mannigfach, und die unmittelbare Gefahr für den Menschen ergibt sich aus den Folgen des Klimawandels. Ganze Bevölkerungsgruppen sind oder werden betroffen sein, in unterschiedlicher Weise und in unterschiedlichem Ausmass. Die Quellen der Treibhausgasemissionen sind mit grundlegenden Aktivitäten der menschlichen Gesellschaft verknüpft, und Minderungsmassnahmen sind notwendigerweise Angelegenheit einer umfassenden Regulierung. Die Dekarbonisierung der Volkswirtschaften und Lebensweisen kann nur durch einen umfassenden und tiefgreifenden Wandel erreicht werden.

Einklang mit den Entwicklungen des Völkerrechts ausgelegt werden muss. Als Ausgangslage für die weitere Beurteilung dient dem EGMR deshalb Folgendes: Der anthropogene Klimawandel existiert, er stellt eine ernste gegenwärtige und künftige Bedrohung für die Ausübung der durch die Konvention garantierten Menschenrechte dar, die Staaten sind sich dessen bewusst und in der Lage, Massnahmen zu ergreifen, die einschlägigen Risiken sind voraussichtlich geringer, wenn der Temperaturanstieg auf 1,5°C begrenzt wird, und die derzeitigen weltweiten Bemühungen zur Eindämmung des Klimawandels reichen nicht aus, um das letztgenannte Ziel zu erreichen.

– *Zusammenhang zwischen einem Schaden oder der Gefahr eines Schadens für bestimmte Personen oder Personengruppen und den Handlungen oder Unterlassungen staatlicher Stellen:* Im Kontext des Klimawandels können Fragen des individuellen Opferstatus oder des spezifischen Inhalts von staatlichen Verpflichtungen nicht auf der Grundlage einer strengen *conditio sine qua non*[10] Voraussetzung bestimmt werden. Vielmehr sind die Besonderheiten des Klimawandels und seine spezifischen Merkmale zu berücksichtigen. Schutzpflichten eines Staates werden in Abhängigkeit eines bestimmten Schweregrades des Risikos nachteiliger Folgen für menschliches Leben, Gesundheit und Wohlergehen ausgelöst.

– *Zurechenbarkeit der Verantwortung für die nachteiligen Auswirkungen des Klimawandels vor dem Hintergrund, dass mehrere Akteure zu den Gesamtmengen und -auswirkungen der Treibhausgasemissionen beitragen:* Jeder Staat hat seinen eigenen Anteil an der Verantwortung, Massnahmen zur Bekämpfung des Klimawandels zu ergreifen. Ein Staat darf sich seiner Verantwortung nicht dadurch entziehen, dass er auf die Verantwortung anderer Staaten verweist. Was das «Tropfen auf den heissen Stein»-Argument betrifft, so muss nach ständiger Rechtsprechung des EGMR nicht nachgewiesen werden, dass der Schaden «ohne» die Unterlassung der Behörden nicht eingetreten wäre. Ausreichend für die Verantwortlichkeit des Staates ist, dass die zumutbaren Massnahmen, die die inländischen Behörden nicht ergriffen haben, eine reale Chance gehabt hätten, das Ergebnis zu ändern oder den Schaden zu mindern. Bei dieser Beurteilung ist zudem das Vorsorgeprinzip miteinzubeziehen (Art. 3 UNFCCC).

E. Grundsätze zur Auslegung der EMRK im Kontext des Klimawandels

15 Der EGMR hat die Aufgabe, die Einhaltung der EMRK zu gewährleisten. Nach seiner ständigen Rechtsprechung ist die EMRK dabei so weit wie möglich im Einklang mit anderen Regeln des Völkerrechts, vorliegend namentlich dem Pariser Klimaübereinkommen, auszulegen. Auch Sachfragen und Entwicklungen, die sich auf die Menschenrechte auswirken, sind einzubeziehen. Bei der Auslegung und Anwendung der EMRK sind deshalb auch die eindeutigen wissenschaftlichen Beweise und der wachsende internationale Konsens hinsichtlich der negativen Auswirkungen des Klimawandels auf die Wahrnehmung der Menschenrechte zu beachten. Ein Versäumnis des EGMR, einen dynamischen und evolutiven Ansatz beizubehalten, brächte die

10 Bedingung, ohne die nicht …

Gefahr mit sich, dass er Reformen oder Verbesserungen in den Gesellschaften verhindert.

F. Beschwerdebefugnis von Einzelpersonen im Kontext des Klimawandels

16 Es gibt stichhaltige wissenschaftliche Beweise dafür, dass der Klimawandel bereits zu einem Anstieg der Krankheits- und Sterblichkeitsrate, insbesondere bei bestimmten schutzbedürftigeren Personengruppen, beigetragen hat, und dass der Klimawandel ohne ein entschlossenes Handeln der Staaten Gefahr läuft, unumkehrbar und katastrophal zu werden.

17 Im Zusammenhang mit dem Klimawandel kann jedoch jede Person auf die eine oder andere Weise und in unterschiedlichem Masse direkt von den nachteiligen Auswirkungen des Klimawandels betroffen sein oder die reale Gefahr haben, direkt davon betroffen zu sein. Potentiell könnte damit eine riesige Anzahl von Personen den Status eines Opfers beanspruchen. Auch die Ergebnisse von Beschwerden sind nicht auf bestimmte identifizierbare Einzelpersonen oder Gruppen beschränkt, sondern betreffen zwangsläufig die Bevölkerung im Allgemeinen. Auch wird das Ergebnis von Gerichtsverfahren zwangsläufig zukunftsorientiert sein im Hinblick auf das, was erforderlich ist, um eine wirksame Abschwächung der nachteiligen Auswirkungen des Klimawandels oder eine Anpassung an seine Folgen zu gewährleisten.

18 Dem EGMR stellte sich vor diesem Hintergrund die Frage, wie der notwendige, wirksame Schutz der EMRK-Rechte gewährleistet werden kann, ohne den Ausschluss der *actio popularis*[11] aus dem Konventionssystem zu untergraben.

19 In Anbetracht dieser besonderen Merkmale des Klimawandels legt der EGMR für den Opferstatus von Einzelpersonen folgende Kriterien fest:

- eine beschwerdeführende Einzelperson muss den nachteiligen Auswirkungen des Klimawandels in hohem Masse ausgesetzt sein, d. h. das Ausmass und die Schwere (des Risikos) von nachteiligen Folgen staatlichen Handelns oder Unterlassens, die die beschwerdeführende Einzelperson betreffen, müssen erheblich sein; und
- es muss ein dringender Bedarf bestehen, den individuellen Schutz der beschwerdeführenden Einzelperson sicherzustellen, da es keine oder nur unzureichende angemessene Massnahmen zur Schadensminderung gibt.

Diese besonderen Kriterien für die Bestimmung der Opfereigenschaft von Einzelpersonen gelten nicht in Fällen, in denen es um einen bestimmten individuellen Verlust oder Schaden geht, der bereits eingetroffen ist.

20 Die Schwelle für das Erfüllen dieser Kriterien ist besonders hoch. Angesichts des Ausschlusses der *actio popularis* hängt die Frage, ob eine beschwerdeführende Einzelperson diese Schwelle erreicht, von einer sorgfältigen Bewertung der konkreten Umstände des Falles ab. In diesem Zusammenhang wird der EGMR Umstände wie die

[11] Popularklage; Klage im öffentlichen Interesse.

örtlichen Bedingungen sowie individuelle Besonderheiten und Verletzlichkeiten gebührend berücksichtigen, ebenso die Aktualität/Entfernung und/oder Wahrscheinlichkeit der nachteiligen Auswirkungen des Klimawandels im Zeitverlauf, die spezifischen Auswirkungen auf das Leben, die Gesundheit oder das Wohlergehen einer beschwerdeführenden Einzelperson, das Ausmass und die Dauer der schädlichen Auswirkungen, den Umfang des Risikos (lokal oder allgemein) und die Art der Verletzlichkeit der beschwerdeführenden Einzelperson.

G. Beschwerdebefugnis von Vereinigungen im Kontext des Klimawandels

21 Der EGMR hält es, auch mit Blick auf die Aarhus-Konvention[12], für angebracht, die Möglichkeit einer Verbandsklage zum Schutz der Menschenrechte derjenigen, die von den nachteiligen Auswirkungen des Klimawandels betroffen sind oder betroffen zu werden drohen, anzuerkennen, anstatt nur jene, die von Einzelpersonen erhoben werden. Namentlich:

- In modernen Gesellschaften, wenn Bürgerinnen und Bürger mit besonders komplexen Verwaltungsentscheidungen konfrontiert sind, ist der Rückgriff auf kollektive Körperschaften wie Vereinigungen eines der zugänglichen Mittel, manchmal das einzige Mittel, das ihnen zur Verfügung steht, um ihre spezifischen Interessen wirksam zu verteidigen.
- Dies trifft insbesondere im Kontext des Klimawandels zu, der ein globales und komplexes Phänomen ist. Er hat vielfältige Ursachen, und seine nachteiligen Auswirkungen betreffen nicht nur ein bestimmtes Individuum oder eine Gruppe von Individuen, sondern sind vielmehr «ein gemeinsames Anliegen der Menschheit» (Präambel der UNFCCC).
- Es hat sich in der heutigen Gesellschaft eine Entwicklung vollzogen hin zu einer Anerkennung der Bedeutung von Vereinigungen für die Klimaprozessführung im Namen betroffener Personen. Bei Rechtsstreitigkeiten im Zusammenhang mit dem Klimawandel geht es oft um komplexe rechtliche und faktische Fragen, die erhebliche finanzielle und logistische Ressourcen und Koordinierung erfordern, und der Ausgang eines Rechtsstreits wirkt sich unweigerlich auf die Position vieler Einzelpersonen aus.
- Mit Blick auf die Lastenverteilung zwischen den Generationen, die von besonderer Bedeutung ist (Rz. 11), kann kollektives Handeln durch Vereinigungen oder andere Interessengruppen eines der einzigen Mittel sein, durch das die Stimme künftiger Generationen gehört werden kann, die in Bezug auf deren Repräsentation in der heutigen Gesellschaft deutlich benachteiligt sind, und durch das sie versuchen können, die relevanten Entscheidungsprozesse zu beeinflussen.
- In Anbetracht der Dringlichkeit, die nachteiligen Auswirkungen des Klimawandels zu bekämpfen, und der Schwere seiner Folgen, einschliesslich der schwerwiegenden Gefahr seiner Unumkehrbarkeit, sollten die Staaten angemessene Massnahmen ergreifen, um nicht nur die EMRK-Rechte derjenigen

[12] Übereinkommen über den Zugang zu Informationen, die Öffentlichkeitsbeteiligung an Entscheidungsverfahren und den Zugang zu Gerichten in Umweltangelegenheiten (Aarhus Konvention), SR 0.814.07.

Personen in ihrem Hoheitsbereich, die gegenwärtig vom Klimawandel betroffen sind, zu sichern, sondern auch derjenigen Personen, deren Genuss der EMRK-Rechte in der Zukunft schwer und unumkehrbar beeinträchtigt werden kann, wenn nicht rechtzeitig gehandelt wird.

22 Der Ausschluss der *actio popularis* erfordert jedoch, dass die Möglichkeit für Vereinigungen, Beschwerden vor dem Gerichtshof einzureichen, an bestimmte Bedingungen geknüpft ist.

23 Die Beschwerdebefugnis von Vereinigungen vor dem EGMR wird vor diesem Hintergrund von folgenden Faktoren bestimmt. Um als berechtigt anerkannt zu werden, muss die betreffende Vereinigung:

– rechtmässig in dem betreffenden Hoheitsgebiet errichtet oder dort beschwerdebefugt sein;

– nachweisen können, dass sie in Übereinstimmung mit ihren Statuten den Zweck verfolgt, die Menschenrechte ihrer Mitglieder oder anderer betroffener Personen in dem betreffenden Hoheitsgebiet zu verteidigen, unabhängig davon, ob sich die Vereinigung auf kollektive Massnahmen zum Schutz dieser Rechte gegen die Bedrohungen durch den Klimawandel beschränkt, oder diese einschliesst;

– nachweisen kann, dass sie als ernsthaft qualifiziert und repräsentativ angesehen werden kann, um im Namen ihrer Mitglieder, oder anderer betroffenen Personen innerhalb des Hoheitsgebiets, welche spezifischen Bedrohungen oder nachteiligen Auswirkungen des Klimawandels auf ihr Leben, ihre Gesundheit oder ihr Wohlergehen, die durch die EMRK geschützt sind, ausgesetzt sind, zu handeln.

24 In diesem Zusammenhang berücksichtigt der EGMR Faktoren wie den Zweck, zu dem die Vereinigung gegründet wurde, die Tatsache, dass sie keinen Erwerbszweck verfolgt, die Art und den Umfang ihrer Tätigkeiten in dem betreffenden Hoheitsgebiet, ihre Mitgliedschaft und Repräsentativität, ihre Grundsätze und die Transparenz ihrer Führung sowie die Frage, ob die Anerkennung einer solchen Beschwerdebefugnis unter den besonderen Umständen eines Falles insgesamt im Interesse einer ordnungsgemässen Rechtspflege liegt.

25 Nicht erforderlich ist für die Beschwerdebefugnis einer Vereinigung, dass die Personen, in deren Namen die Klage erhoben wurde, selbst die Anforderungen an den Opferstatus von Einzelpersonen im Zusammenhang mit dem Klimawandel erfüllt (Rz. 19 f.).

26 Wird die Beschwerdebefugnis von Vereinigungen, die die oben genannten Voraussetzungen erfüllen, vor nationalen Gerichten beschränkt, kann der EGMR im Interesse einer geordneten Rechtspflege auch berücksichtigen, ob und inwieweit einzelne Mitglieder oder andere Betroffene in demselben oder in einem damit zusammenhängenden innerstaatlichen Verfahren Zugang zu einem Gericht gehabt haben.

H. Wann ist das «Recht auf Leben» (Art. 2 EMRK) im Kontext des Klimawandels berührt?

27 Versäumnisse eines Staates bei der Bekämpfung des Klimawandels können naturgemäss das Leben eines Menschen gefährden. Die Beschwerdeführenden haben überzeugende wissenschaftliche Beweise vorgebracht, die einen Zusammenhang zwischen dem Klimawandel und einem erhöhten Sterberisiko, insbesondere bei gefährdeten Gruppen, belegen.

28 Die Anwendbarkeit von Art. 2 EMRK kann jedoch nicht abstrakt erfolgen, sondern es muss eine «reale und unmittelbare» Gefahr für das Leben bestehen. Das Kriterium «real und unmittelbar» kann im Kontext des Klimawandels so verstanden werden, dass es sich um eine «ernsthafte, tatsächliche und hinreichend bestimmbare Bedrohung» des Lebens handelt, die ein Element der materiellen und zeitlichen Nähe der Bedrohung zu den geltend gemachten Schäden enthält.

29 Diese Bedrohung kann unter Umständen wie im vorliegenden Fall grundsätzlich gegeben sein, da der IPCC mit grosser Sicherheit festgestellt hat, dass ältere Personen einem «höchsten Risiko» für temperaturbedingte Morbidität und Mortalität ausgesetzt sind. Es ist aber dennoch fraglich, ob die staatliche Untätigkeit so lebensbedrohliche Folgen hatte, als dass sie die Anwendbarkeit von Art. 2 EMRK auslösen konnte. Da die staatliche Schutzpflicht im Umweltskontext im Rahmen von Art. 8 EMRK weitgehend mit derjenigen nach Art. 2 EMRK überlappt, kann diese Frage jedoch offengelassen werden.

I. Wann ist das «Recht auf Privat- und Familienleben» (Art. 8 EMRK) im Kontext des Klimawandels berührt?

30 Art. 8 EMRK umfasst das Recht des Einzelnen auf wirksamen Schutz durch die staatlichen Behörden vor schwerwiegenden nachteiligen Auswirkungen des Klimawandels auf sein Leben, seine Gesundheit, sein Wohlergehen und seine Lebensqualität.

31 Die Anwendbarkeit von Art. 8 EMRK hängt von der «tatsächlichen Beeinträchtigung» oder des Vorliegens einer «relevanten und hinreichend schwerwiegenden Gefahr einer Beeinträchtigung» des Lebens, der Gesundheit, des Wohlergehens und der Lebensqualität ab. Bei der Prüfung, ob diese Voraussetzung erfüllt ist, ist auf die Kriterien zum Opferstatus von Einzelpersonen (Rz. 19 f.) oder zur Beschwerdebefugnis von Vereinigungen (Rz. 23 ff.) abzustellen.

32 Der Verein KlimaSeniorinnen Schweiz hat Beschwerdebefugnis, weshalb Art. 8 EMRK auf die Beschwerde anwendbar ist. Denn der Verein KlimaSeniorinnen Schweiz

- ist rechtmässig gegründet,
- verfolgt in Übereinstimmung mit seinen Statuten den Zweck der Verteidigung der Menschenrechte seiner Mitglieder und anderer betroffener Personen gegen die Bedrohungen, die sich aus dem Klimawandel in der Schweiz ergeben,

– ist qualifiziert und repräsentativ, um im Namen derjenigen Personen zu handeln, die in vertretbarer Weise behaupten, spezifischen Bedrohungen oder nachteiligen Auswirkungen des Klimawandels auf ihr Leben, ihre Gesundheit, ihr Wohlergehen und ihre Lebensqualität, wie sie durch die EMRK geschützt sind, ausgesetzt zu sein.

– Zudem hatten die beschwerdeführenden Einzelpersonen keinen Zugang zu einem Gericht in der Schweiz. Die Gewährung der Klagebefugnis für den Verein KlimaSeniorinnen Schweiz liegt daher im Interesse einer ordnungsgemässen Rechtspflege.

33 Die individuellen Beschwerdeführerinnen haben demgegenüber keinen Opferstatus, weshalb auch Art. 8 EMRK in Bezug auf sie nicht anwendbar ist. Die individuellen Beschwerdeführerinnen haben die Kriterien zum Opferstatus von Einzelpersonen im Kontext des Klimawandels nicht erfüllt.

– Zwar haben die individuelle Beschwerdeführerinnen Informationen und Beweise vorgelegt, die zeigen, wie sich der Klimawandel auf ältere Frauen in der Schweiz auswirkt, insbesondere in Bezug auf die zunehmende Häufigkeit und Intensität von Hitzewellen. Die von den individuellen Beschwerdeführerinnen vorgelegten Daten, die von inländischen und internationalen Expertengremien stammen und deren Relevanz und Beweiskraft nicht in Frage gestellt wird, zeigen, dass mehrere Sommer in den letzten Jahren zu den wärmsten jemals in der Schweiz verzeichneten Sommern gehörten und dass Hitzewellen mit einer erhöhten Mortalität und Morbidität, insbesondere bei älteren Frauen, verbunden sind. Auch wenn diese Feststellungen zweifellos darauf hindeuten, dass die individuellen Beschwerdeführerinnen zu einer Gruppe gehören, die für die Auswirkungen des Klimawandels besonders anfällig ist, reicht dies in Anbetracht der hohen Schwelle, die für den Opferstatus von Einzelpersonen im Kontext des Klimawandels gilt, nicht aus.

– Und auch wenn die individuellen Beschwerdeführerinnen 2, 3 und 4 womöglich tatsächlich durch die Hitzewellen individuell in ihrer Lebensqualität beeinträchtigt werden, geht aus den Unterlagen nicht hervor, dass sie den nachteiligen Auswirkungen des Klimawandels in einer Intensität ausgesetzt waren oder ausgesetzt zu sein drohen, die ein dringendes Bedürfnis nach individuellem Schutz begründen würde. Die individuellen Beschwerdeführerinnen litten nicht an einem kritischen Gesundheitszustand, dessen mögliche Verschlimmerung durch Hitzewellen nicht durch die in der Schweiz verfügbaren Anpassungsmassnahmen oder durch zumutbare persönliche Anpassungsmassnahmen gelindert werden könnte. Diese Beurteilung erfolgt auch in Anbetracht des Ausmasses der Hitzewellen, von denen die Schweiz betroffen ist.

J. Was müssen die Europaratsstaaten im Kontext des Klimawandels tun, um ihre menschenrechtliche Schutzpflicht zu erfüllen?

1. Die Schutzpflicht der Staaten in Umweltangelegenheiten (ständige Rechtsprechung)

34 Nach ständiger Rechtsprechung des EGMR zur Wahrnehmung von Schutzpflichten im Kontext von Umweltfragen

- haben die Staaten die Verpflichtung, einen Rechts- und Verwaltungsrahmen zu schaffen, der einen wirksamen Schutz der menschlichen Gesundheit und des menschlichen Lebens gewährleistet;
- und müssen die Staaten diesen Rechts- und Verwaltungsrahmen rechtzeitig und wirksam anwenden.

35 Bei der Beurteilung darüber, ob ein Staat seine Schutzpflichten wahrgenommen hat, muss das Gericht prüfen, ob der Staat innerhalb seines Ermessensspielraums gehandelt hat. Dabei ist es nicht die Aufgabe des EGMR, zu bestimmen, was genau hätte getan werden müssen, aber er kann beurteilen, ob die Behörden die Angelegenheit mit der gebotenen Sorgfalt angegangen sind und alle konkurrierenden Interessen berücksichtigt haben.

36 Von Bedeutung ist auch der innerstaatliche Entscheidungsprozess. Dieser muss betreffend komplexer Fragen wie der Umwelt- und Wirtschaftspolitik notwendigerweise angemessene Untersuchungen und Studien umfassen, damit die Behörden einen gerechten Ausgleich zwischen den verschiedenen auf dem Spiel stehenden Interessen vornehmen können. Zudem muss die Öffentlichkeit Zugang zu den Schlussfolgerungen der einschlägigen Studien haben, damit sie das Risiko, dem sie ausgesetzt ist, einschätzen kann. Betroffene Personen müssen die Möglichkeit haben, sich wirksam an den einschlägigen Verfahren zu beteiligen und ihre einschlägigen Argumente prüfen zu lassen, auch wenn die konkrete Ausgestaltung des Verfahrens in den Ermessensspielraum des Staates fällt.

37 Bei der Ermittlung des Inhalts der Schutzpflicht eines Staates nach den Art. 2 und 8 EMRK im Zusammenhang mit dem Klimawandel berücksichtigt der EGMR diese Prinzipien. Angesichts der besonderen Natur des Phänomens des Klimawandels im Vergleich zu den isolierten Quellen von Umweltschäden, die zuvor in der Rechtsprechung des Gerichtshofs behandelt wurden, müssen die allgemeinen Parameter der Schutzpflicht jedoch an den spezifischen Kontext des Klimawandels angepasst werden.

2. Der Ermessensspielraum der Staaten im Kontext des Klimawandels

38 Nach dem Subsidiaritätsprinzip sind in erster Linie die nationalen Behörden für die Wahrung der in der Konvention festgelegten Rechte und Freiheiten verantwortlich; dabei verfügen sie vorbehaltlich der Kontrollbefugnis des EGMR über einen Ermessensspielraum.

39 In Anbetracht der wissenschaftlichen Erkenntnisse über die Art und Weise, wie der Klimawandel die EMRK-Rechte berührt, und unter Berücksichtigung der wissenschaftlichen Erkenntnisse über die Dringlichkeit der Bekämpfung der nachteiligen Auswirkungen des Klimawandels, der Schwere seiner Folgen, einschliesslich der ernsten Gefahr, dass sie den Punkt der Unumkehrbarkeit erreichen, und der wissenschaftlichen, politischen und gerichtlichen Anerkennung eines Zusammenhangs zwischen den nachteiligen Auswirkungen des Klimawandels und der Wahrnehmung (verschiedener Aspekte) der Menschenrechte hält es der EGMR für gerechtfertigt, dass dem Klimaschutz bei der Abwägung aller konkurrierenden Erwägungen erhebliches Gewicht zukommt. Weitere Faktoren, die in dieselbe Richtung weisen, sind der globale Charakter der Auswirkungen von Treibhausgasemissionen im Gegensatz zu Umweltschäden, die nur innerhalb der eigenen Grenzen eines Staates auftreten, und die allgemein unzureichende Erfolgsbilanz der Staaten bei der Ergreifung von Massnahmen zur Bewältigung der Risiken des Klimawandels und die Feststellung des IPCC, dass sich «das Zeitfenster für die Sicherung einer lebenswerten und nachhaltigen Zukunft für alle rasch schliesst.» Diese Umstände unterstreichen die Schwere der Risiken, die sich aus der Nichteinhaltung des globalen Gesamtziels ergeben.

40 Ausgehend von dem Grundsatz, dass den Staaten ein gewisser Ermessensspielraum zustehen muss, ergibt sich aus den vorstehenden Erwägungen eine Unterscheidung zwischen dem Umfang des Ermessens:

- Geringer Ermessensspielraum in Bezug auf die Festlegung der erforderlichen Ziele zur Bekämpfung des Klimawandels (aufgrund der Art und Schwere der Bedrohung und aufgrund des allgemeinen Konsenses über die Bedeutung eines wirksamen Klimaschutzes durch Treibhausgas-Reduktionsziele im Einklang mit der von den Vertragsparteien eingegangenen Verpflichtung, CO_2-Neutralität zu erreichen).
- Weiter Ermessensspielraum in Bezug auf die Wahl der Mittel zur Erfüllung dieser Ziele.

3. Schutzpflicht eines Staates im Kontext des Klimawandels

41 Art. 8 EMRK beinhaltet ein Recht des Einzelnen auf wirksamen staatlichen Schutz vor schwerwiegenden nachteiligen Auswirkungen auf sein Leben, seine Gesundheit, sein Wohlergehen und seine Lebensqualität, die sich aus den schädlichen Auswirkungen und Risiken des Klimawandels ergeben.

42 Die aus diesem Recht fliessende Verpflichtung eines Staates besteht darin, seinen Teil dazu beizutragen, diesen wirksamen Schutz zu gewährleisten. Der wirksame Schutz beinhaltet, im Einklang mit den von den Mitgliedstaaten eingegangenen internationalen Verpflichtungen (insbesondere UNFCCC und Pariser Klimaübereinkommen) und den stichhaltigen wissenschaftlichen Erkenntnissen (insbesondere des IPCC), einen Anstieg der globalen Durchschnittstemperatur über ein Niveau hinaus zu verhindern, das geeignet ist, schwerwiegende und unumkehrbare nachteilige Auswirkungen auf die Menschenrechte zu verursachen.

43 Es ist dabei die hauptsächliche Pflicht der Staaten,

– verbindliche Vorschriften und Massnahmen zu erlassen, die in der Lage sind, die bestehenden und potenziell unumkehrbaren künftigen Auswirkungen des Klimawandels abzumildern, und diese

– in der Praxis wirksam anzuwenden und umzusetzen.

44 Diese Vorschriften und Massnahmen müssen

– auf die spezifischen Merkmale des betreffenden Sachverhalts (§§ 107–120 des Entscheids, oben Rz. 4) und der damit verbundenen Risiken ausgerichtet sein;

– durch die im Pariser Klimaübereinkommen formulierten globalen Ziele zur Begrenzung des Anstiegs der globalen Temperatur bestimmt sein. Wobei für die Beurteilung der Einhaltung der EMRK diese Ziele alleine offensichtlich nicht genügen. Jeder einzelne Staat ist aufgerufen, seinen eigenen nationalen Weg zur Erreichung der CO_2-Neutralität festzulegen.

45 Bei der Beurteilung, ob ein Staat unter Einbezug seines Ermessensspielraums (oben Rz. 38 ff.) seinen Verpflichtungen nachgekommen ist, prüft der EGMR, ob die zuständigen nationalen Behörden, sei es auf legislativer, exekutiver oder justizieller Ebene, angemessen berücksichtigt haben, dass es erforderlich ist:

a. Generelle Massnahmen festzulegen, die einen Zeitplan zur Erreichung der CO_2-Neutralität und das insgesamt verbleibende CO_2-Budget für denselben Zeitraum spezifizieren, im Einklang mit dem übergeordneten Ziel nationaler und/oder globaler Verpflichtungen zur Eindämmung des Klimawandels;

b. Zwischenziele und Wege zur Reduzierung der Treibhausgasemissionen (nach Sektoren oder anderen relevanten Methoden) festzulegen, die grundsätzlich geeignet sind, die nationalen Gesamtziele für die Reduzierung der Treibhausgasemissionen zu erreichen;

c. den Nachweis zu erbringen, dass sie die einschlägigen Treibhausgas-Reduktionsziele (siehe Buchstaben a und b) ordnungsgemäss erfüllt haben oder dabei sind, sie zu erfüllen;

d. die einschlägigen Treibhausgas-Reduktionsziele mit der gebotenen Sorgfalt und auf der Grundlage der besten verfügbaren Wissenschaft zu aktualisieren; und

e. bei der Ausarbeitung und Umsetzung der einschlägigen Rechtsvorschriften und Massnahmen rechtzeitig und in angemessener und kohärenter Weise zu handeln.

46 Die Beurteilung des EGMR, ob diese Anforderungen erfüllt sind, ist von umfassender Natur. Ein Mangel in einem bestimmten Bereich hat für sich alleine nicht notwendigerweise zur Folge, dass der Staat seinen Ermessensspielraum überschritten hat.

47 Ein wirksamer staatlicher Schutz des Einzelnen vor den schwerwiegenden nachteiligen Auswirkungen auf sein Leben, seine Gesundheit, sein Wohlergehen und seine Lebensqualität, die sich aus den schädlichen Auswirkungen und Risiken des

Klimawandels ergeben, erfordert zudem, dass die oben genannten Minderungsmassnahmen durch Anpassungsmassnahmen ergänzt werden. Die Anpassungsmassnahmen dienen dazu, die schwerwiegendsten oder unmittelbar bevorstehenden Folgen des Klimawandels abzumildern, wobei alle relevanten besonderen Schutzbedürfnisse zu berücksichtigen sind. Sie müssen in Übereinstimmung mit der besten verfügbaren Wissenschaft und im Einklang mit der allgemeinen Struktur der Schutzpflichten des Staates (oben Rz. 34) umgesetzt und wirksam angewendet werden.

48 Bei der Entscheidung, ob ein Staat seinen Ermessensspielraum eingehalten hat, sind die den Betroffenen zur Verfügung stehenden Verfahrensgarantien (oben Rz. 36) besonders relevant. Dies gilt nicht nur für die Festlegung der Ziele, sondern auch in Bezug auf die (politische) Wahl der Mittel zur Erreichung dieser Ziele.

- Die Informationen, über die die Behörden verfügen und die für die Ausarbeitung und Umsetzung der einschlägigen Regelungen und Massnahmen zur Bekämpfung des Klimawandels von Bedeutung sind, müssen der Öffentlichkeit und insbesondere den Personen, die von den betreffenden Vorschriften und Massnahmen oder deren Fehlen betroffen sein könnten, zugänglich gemacht werden.
- Es müssen Verfahrensgarantien verfügbar sein, die sicherstellen, dass die Öffentlichkeit Zugang zu den Schlussfolgerungen von relevanten Studien hat.
- Es müssen Verfahren zur Verfügung stehen, mit denen die Ansichten der Öffentlichkeit und insbesondere die Interessen derjenigen, die von den betreffenden Regelungen und Massnahmen oder deren Fehlen betroffen sind oder betroffen zu werden drohen, im Entscheidungsprozess berücksichtigt werden können.

4. Konsumbedingte Emissionen

49 Es wäre schwierig, wenn nicht gar unmöglich, die Verantwortung der Schweiz für die Auswirkungen ihrer Treibhausgasemissionen auf die Menschenrechte zu erörtern, ohne die Emissionen der Schweiz durch die Einfuhr von Waren und deren Verbrauch zu berücksichtigen.

K. Aus welchen Gründen kam das Gericht zum Schluss, dass die Schweiz (Stand: 14. Februar 2024) die menschenrechtliche Schutzpflicht nach Art. 8 EMRK nicht erfüllt hat?

50 Das derzeit geltende CO_2-Gesetz von 2011 (in Kraft seit 2013)[13] sah vor, dass die Treibhausgasemissionen bis 2020 insgesamt um 20 % gegenüber dem Stand von 1990 reduziert werden sollten.

- Der Bundesrat hat jedoch selbst festgestellt, dass Industrieländer (wie die Schweiz) ihre Emissionen bis 2020 um 25-40 % gegenüber 1990 hätten

[13] Bundesgesetz über die Reduktion der CO_2-Emissionen (CO_2-Gesetz), SR 641.71.

reduzieren müssen, und dass das Reduktionsziel von 20 % bis 2020 auch mit Blick auf die langfristigen Zielsetzungen ungenügend war.

– Die Behörden haben zudem selbst festgestellt, dass das Treibhausgas-Reduktionsziel für 2020 verfehlt wurde. Die Schweiz hat im Zeitraum zwischen 2013 und 2020 ihre Treibhausgasemissionen im Durchschnitt um etwa 11 % gegenüber dem Stand von 1990 reduziert, was darauf hindeutet, dass die bisherigen Massnahmen der Behörden ungenügend sind.

51 Im Dezember 2017 legte der Bundesrat eine Überarbeitung des CO_2-Gesetzes von 2011 für den Zeitraum von 2020 bis 2030 vor, die eine Gesamtreduktion von 50 % der Treibhausgasemissionen vorsah. Diese beinhaltete eine inländische Reduktion von 30 % bis 2030 im Vergleich zu den Werten von 1990, während der Rest durch im Ausland ergriffene Massnahmen erreicht werden sollte. Diese vorgeschlagene Überarbeitung des CO_2-Gesetzes wurde im Juni 2021 in einer Volksabstimmung abgelehnt. Laut der Regierung bedeutete dies nicht, dass die Bürgerinnen und Bürger die Notwendigkeit der Bekämpfung der globalen Erwärmung oder die Reduzierung der nationalen Treibhausgasemissionen ablehnten, sondern vielmehr die vorgeschlagenen Mittel dazu. In diesem Zusammenhang betont der EGMR erneut, dass den Staaten hinsichtlich der Wahl der Mittel zur Bekämpfung des Klimawandels ein weiter Ermessensspielraum eingeräumt wird.

– In jedem Fall und unabhängig davon, wie das Gesetzgebungsverfahren aus verfassungsrechtlicher Sicht organisiert ist, ist es eine Tatsache, dass nach dem Referendum eine regulative Lücke für die Zeit nach 2020 bestand. Die Schweiz versuchte, diese Lücke zu schliessen, indem sie am 17. Dezember 2021 eine Teilrevision des bestehenden CO_2-Gesetzes von 2011 in Kraft setzte, wonach das Reduktionsziel für die Jahre 2021 bis 2024 auf 1,5 % pro Jahr gegenüber 1990 festgelegt wurde, mit der Massgabe, dass ab 2022 maximal 25 % dieser Reduktion durch Massnahmen im Ausland erreicht werden können.

– Damit blieb der Zeitraum nach 2024 ungeregelt und damit unvereinbar mit dem Erfordernis des Vorhandenseins von generellen Massnahmen, die die Minderungsmassnahmen der Schweiz im Einklang mit einem Plan zur Erreichung der CO_2-Neutralität festlegen (§ 550 a) des Entscheids).

– Die Schweiz hat es damit versäumt, ihrer Verpflichtung nachzukommen, einen Regelungsrahmen mit den erforderlichen Zielen zu schaffen (§ 550 a) - b) des Entscheids). In diesem Zusammenhang sei darauf hingewiesen, dass der IPCC betont, dass die in diesem Jahrzehnt getroffenen Entscheidungen und durchgeführten Massnahmen Auswirkungen auf die Gegenwart und auf Tausende von Jahren haben werden.

52 Am 30. September 2022 wurde das Bundesgesetz über die Ziele im Klimaschutz, die Innovation und die Stärkung der Energiesicherheit (KIG) erlassen, das die Verpflichtungen des aktualisierten national bestimmten Beitrags (*Nationally Determined Contribution*, NDC) unter dem Pariser Klimaübereinkommen widerspiegelt. Dieses Gesetz - das erst am 18. Juni 2023 in einem Referendum bestätigt wurde, aber noch nicht in Kraft getreten ist - sieht ein Netto-Null-Emissionsziel bis 2050 vor. Dazu sollen

die Treibhausgasemissionen «so weit wie möglich» reduziert werden. Ausserdem ist ein Zwischenziel für das Jahr 2040 (Reduzierung um 75 % gegenüber dem Stand von 1990) sowie für die Jahre 2031 bis 2040 (durchschnittlich mindestens 64 %) und 2041 bis 2050 (durchschnittlich mindestens 89 % gegenüber dem Stand von 1990) vorgesehen. Ferner wurden Richtwerte für die Reduzierung der Emissionen in den Bereichen Gebäude, Verkehr und Industrie für die Jahre 2040 und 2050 festgelegt.

– Der EGMR stellt in diesem Zusammenhang fest, dass das KIG zwar die allgemeinen Ziele und Vorgaben festlegt, dass aber die konkreten Massnahmen zur Erreichung dieser Ziele nicht im Gesetz aufgeführt sind, sondern vom Bundesrat festgelegt und dem Parlament «rechtzeitig» vorgeschlagen werden müssen (Art. 11 Abs. 1 KIG).

– Zudem soll der Erlass der konkreten Massnahmen im Rahmen des CO_2-Gesetzes 2011 erfolgen (Art. 11 Abs. 2 KIG), das, wie erwähnt (Rz. 50), in seiner jetzigen Form nicht als ausreichender Regelungsrahmen angesehen werden kann.

– Es ist auch zu beachten, dass die neue Regelung im KIG nur Zwischenziele für den Zeitraum nach 2031 betrifft. In Anbetracht der Tatsache, dass das CO_2-Gesetz 2011 eine gesetzliche Regelung der Zwischenziele nur bis 2024 vorsieht (Rz. 51), bedeutet dies, dass der Zeitraum zwischen 2025 und 2030 bis zum Erlass neuer Rechtsvorschriften noch nicht geregelt ist.

53 Unter diesen Umständen hat der EGMR angesichts der grossen Dringlichkeit des Klimawandels und des derzeitigen Fehlens eines zufriedenstellenden Rechtsrahmens Schwierigkeiten, anzunehmen, dass die blosse gesetzgeberische Verpflichtung, «rechtzeitig» konkrete Massnahmen zu ergreifen, wie sie im KIG vorgesehen ist, die Pflicht des Staates erfüllt, für einen wirksamen Schutz der seiner Zuständigkeit unterliegenden Personen vor den nachteiligen Auswirkungen des Klimawandels auf ihr Leben und ihre Gesundheit zu sorgen und diesen Schutz in der Praxis tatsächlich zu gewährleisten. Die Einführung des KIG reicht nicht aus, um die festgestellten Mängel des bisher geltenden Rechtsrahmens zu beheben.

54 Der Verein KlimaSeniorinnen Schweiz hat eine Schätzung des verbleibenden Schweizer CO_2-Budgets unter der derzeitigen Situation vorgelegt, wobei auch die durch das KIG eingeführten Ziele und Pfade berücksichtigt wurden. Unter Bezugnahme auf die Ermittlung des globalen CO_2-Budgets durch den IPCC und die Daten des schweizerischen Treibhausgasinventars hat der Verein KlimaSeniorinnen Schweiz eine Schätzung vorgelegt, wonach die Schweiz unter der Annahme einer global gleichen Pro-Kopf-Emissionsverteilung ab 2020 über ein verbleibendes CO_2-Budget von 0,44 $GtCO_2$ verfügen würde, damit eine 67 % Chance besteht, die 1,5°C-Grenze einzuhalten (oder 0,33 $GtCO_2$ für eine 83 % Chance). In einem Szenario mit einer Reduktion der CO_2-Emissionen um 34 % bis 2030 und um 75 % bis 2040 würde die Schweiz das verbleibende Budget bis etwa 2034 (oder 2030 bei einer 83 % Chance) verbraucht haben. Somit hat die Schweiz im Rahmen ihrer derzeitigen Klimastrategie mehr Treibhausgasemissionen zugelassen, als sie sogar bei einer Quantifizierung nach dem Prinzip der «gleichen Pro-Kopf-Emissionen» berechtigt wäre.

55 Die Schweizer Regierung beruft sich auf den Policy Brief von 2012[14], um das Fehlen eines spezifischen CO_2-Budgets für die Schweiz zu rechtfertigen. Zudem behauptete sie, dass es keine etablierte Methode zur Bestimmung des CO_2-Budgets eines Landes gebe, und räumte ein, dass die Schweiz kein solches festgelegt habe. Sie argumentierte, dass die nationale Klimapolitik der Schweiz als ein ähnlicher Ansatz wie die Festlegung eines CO_2-Budgets angesehen werden könne, und dass diese Klimapolitik auf einschlägigen internen Bewertungen[15] beruhe, die im Jahr 2020 erstellt und in den NDCs zum Ausdruck gebracht worden seien.

56 Der EGMR stellt hierzu fest, dass

- keine wirksame Regulierung betreffend den Klimawandel geschaffen werden kann, ohne dass die nationalen Treibhausgas-Emissionsbegrenzungen durch ein CO_2-Budget oder auf andere Weise quantifiziert werden (§ 550 a) des Entscheids);
- der IPCC die Bedeutung von CO_2-Budgets und Netto-Null-Strategien hervorgehoben hat (§ 116 des Entscheids), was durch die Berufung auf die NDCs des Staates im Rahmen des Pariser Klimaübereinkommens nicht kompensiert werden kann;
- die Argumentation des Bundesverfassungsgerichts der Bundesrepublik Deutschland überzeugt, welches das Argument, es sei unmöglich, ein nationales CO_2-Budget zu bestimmen, zurückgewiesen und dabei u. a. auf den Grundsatz der gemeinsamen, aber unterschiedlichen Verantwortlichkeiten im Rahmen des UNFCCC und des Pariser Klimaübereinkommens verwiesen hat. Dieser Grundsatz verlangt von den Staaten, dass sie auf der Grundlage der Gerechtigkeit und entsprechend ihren jeweiligen Fähigkeiten handeln;
- die Massnahmen und Methoden, die die Einzelheiten der Klimapolitik eines Staates bestimmen, zwar in seinen Ermessensspielraum fallen. In Ermangelung einer innerstaatlichen Massnahme, mit der versucht wird, das verbleibende CO_2-Budget der Schweiz zu quantifizieren, kommt die Schweiz ihrer Regulierungspflicht nach Art. 8 EMRK aber nicht nach.

L. Inwiefern und gegenüber wem hat die Schweiz den Zugang zum Gericht (Art. 6 EMRK) verletzt?

57 Art. 6 EMRK kann nicht herangezogen werden, um ein Gericht anzurufen mit dem Ziel, das Parlament zum Erlass von Rechtsvorschriften zu zwingen, wenn dies im innerstaatlichen Recht nicht vorgesehen ist. Entsprechend fallen auf nationaler Ebene gestellte Forderungen nach legislativen und regulatorischen Massnahmen nicht in den Anwendungsbereich von Art. 6 EMRK. Die wirksame Umsetzung der

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14 BRETSCHGER, Climate Policy and Equity Principles: Fair Burden Sharing in a Dynamic World, Center of Economic Research at ETH Zurich, Policy Brief 12/16, March 2012, abrufbar unter https://www.klimaseniorinnen.ch/wp-content/uploads/2023/04/230329_written-submission-Switzerland_annex_1_Bretschger_Policy_Brief.pdf.

15 Swiss Federal Office fort he Environment, internal working document, Klimawandel und das Pariser Abkommen: Welcher NDC der Schweiz ist «fair und ambitiös»? 2020, abrufbar unter https://www.klimaseniorinnen.ch/wp-content/uploads/2023/04/230329_written-submission-Switzerland_annex_2_internal_working_document.pdf.

Minderungsmassnahmen nach geltendem Recht, welche die Beschwerdeführenden ebenfalls verlangt haben, ist aber eine Angelegenheit, die in den Anwendungsbereich von Art. 6 EMRK fallen kann.

58 Das Recht auf Leben nach Art. 10 BV ist in Übereinstimmung mit der ständigen Rechtsprechung des EGMR eine Zivilsache. Es bestand zweifellos eine echte und schwerwiegende Streitigkeit über die Achtung dieses Rechts. Zur weiteren Voraussetzung, dass der Ausgang des Verfahrens für die Rechte der Beschwerdeführenden «unmittelbar entscheidend» sein müssen, stellt der EGMR Folgendes fest.

– Der Verein KlimaSeniorinnen Schweiz hat nachgewiesen, dass er einen tatsächlichen und hinreichend engen Bezug zu dem beanstandeten Sachverhalt und zu den Personen hatte, die Schutz vor den nachteiligen Auswirkungen des Klimawandels auf ihr Leben, ihre Gesundheit und ihre Lebensqualität suchen. Er bezweckte, die spezifischen Zivilrechte seiner Mitglieder in Bezug auf die nachteiligen Auswirkungen des Klimawandels zu verteidigen, und fungierte als ein Mittel, mit dem die Rechte der vom Klimawandel Betroffenen verteidigt werden konnten und mit dem sie versuchen konnten, eine angemessene Korrektur der staatlichen Versäumnisse zu erwirken.

– Soweit ein Rechtsstreit diese kollektive Dimension widerspiegelt, ist das Erfordernis eines für die Rechte «unmittelbar entscheidenden» Verfahrensausganges in dem weiteren Sinne zu verstehen, dass eine Form der Korrektur von Handlungen und Unterlassungen der Behörden angestrebt wird, die die Zivilrechte der Mitglieder nach nationalem Recht beeinträchtigen.

– In diesem Zusammenhang wird auf die Feststellungen zur Klagebefugnis von Vereinigungen verwiesen (Rz. 21 ff.); namentlich auf die wichtige Rolle von Vereinigungen bei der Verteidigung bestimmter Anliegen im Bereich des Umweltschutzes, sowie auf die besondere Bedeutung kollektiver Massnahmen im Zusammenhang mit dem Klimawandel, dessen Folgen nicht spezifisch auf bestimmte Personen beschränkt sind.

– Betreffend die individuellen Beschwerdeführerinnen kann demgegenüber aus ähnlichen Gründen, wie sie in Bezug auf Art. 8 EMRK dargelegt wurden (§§ 527-535 des Entscheids), nicht davon ausgegangen werden, dass sie nachgewiesen haben, dass die von den Behörden geforderten Massnahmen - nämlich die tatsächliche Umsetzung von Minderungsmassnahmen nach dem geltenden nationalen Recht - allein hinreichend unmittelbare und sichere Auswirkungen auf ihre individuellen Rechte im Zusammenhang mit dem Klimawandel gehabt hätten.

59 Art. 6 EMRK ist daher auf die Beschwerde des Vereins KlimaSeniorinnen Schweiz anwendbar, nicht aber auf die Beschwerde der individuellen Beschwerdeführerinnen.

60 Das Recht auf Zugang zu einem Gericht nach Art. 6 EMRK umfasst nicht nur das Recht, ein Verfahren einzuleiten, sondern auch das Recht, eine gerichtliche Entscheidung über eine Streitigkeit zu erwirken. Im vorliegenden Fall wurde die Begründetheit der

Vorbringen des Vereins KlimaSeniorinnen Schweiz im innerstaatlichen Verfahren nicht geprüft, was eine Beschränkung dieses Rechts darstellt.

61 Der EGMR muss daher prüfen, ob der Zugang zum Gericht betreffend die beantragte wirksame Umsetzung von Minderungsmassnahmen nach geltendem Recht in einer Weise oder in einem Ausmass eingeschränkt wurde, sodass der Wesensgehalt dieses Rechts beeinträchtigt wurde.

– Die beantragte wirksame Umsetzung von Minderungsmassnahmen nach geltendem Recht kann nicht automatisch als *actio popularis* oder als eine politische Frage angesehen werden. Diese Position entspricht der Argumentation, die in § 436 des Entscheids dargelegt wurde zu den Auswirkungen des Klimawandels auf die Menschenrechte und zur dringenden Notwendigkeit, den durch den Klimawandel entstehenden Bedrohungen zu begegnen.

– Die Feststellungen der innerstaatlichen Gerichte, dass noch etwas Zeit blieb, um zu verhindern, dass die globale Erwärmung die kritische Grenze erreicht, beruhte nicht auf einer ausreichenden Prüfung der wissenschaftlichen Erkenntnisse zum Klimawandel, die zum massgeblichen Zeitpunkt bereits vorlagen, sowie der allgemeinen Anerkennung der Dringlichkeit hinsichtlich der bestehenden und unvermeidlichen künftigen Auswirkungen des Klimawandels auf verschiedene Aspekte der Menschenrechte.

– In der Tat legen die vorhandenen Beweise und wissenschaftlichen Erkenntnisse zur Dringlichkeit der Bewältigung der negativen Auswirkungen des Klimawandels, einschliesslich des ernsten Risikos ihrer Unvermeidlichkeit und ihrer Unumkehrbarkeit, nahe, dass es ein dringendes Erfordernis gab, den rechtlichen Schutz der Menschenrechte sicherzustellen.

– Auch die innerstaatlichen Behörden haben sich unter unangemessenen und unzureichenden Erwägungen nicht mit dem Inhalt der Vorbringen des Vereins KlimaSeniorinnen Schweiz befasst.

62 Die Schweiz hat das Recht des Vereins KlimaSeniorinnen Schweiz auf Zugang zu einem Gericht in einer Weise und in einem Ausmass eingeschränkt, sodass der Wesensgehalt dieses Rechts beeinträchtigt wurde. Damit hat sie Art. 6 EMRK verletzt.

63 Vor diesem Hintergrund ist die Schlüsselrolle hervorzuheben, die die nationalen Gerichte bei Rechtsstreitigkeiten im Zusammenhang mit dem Klimawandel gespielt haben und spielen werden. Dies widerspiegelt sich in der bisherigen Rechtsprechung in einigen Mitgliedstaaten des Europarats, die die Bedeutung des Zugangs zu einem Gericht in diesem Bereich hervorheben. In Anbetracht der Grundsätze der geteilten Verantwortung und der Subsidiarität obliegt es in erster Linie den nationalen Behörden, einschliesslich der Gerichte, dafür zu sorgen, dass die Verpflichtungen aus der EMRK eingehalten werden.

II. Anhang (Auszüge aus dem Entscheid der Grossen Kammer des Europäischen Menschenrechtsgerichtshofs vom 9. April 2024)

A. Facts in relation to climate change emerging from the material available to the Court

103. With a view to its examination of the present case, and having regard to the two other cases being examined by the Grand Chamber (see paragraph 5 above), in which rulings are being delivered on the same day, as well as other pending cases stayed at the Chamber level, ***the Court deems it necessary to highlight the following factual elements which emerge from the material available to it****.*

106. The Court further notes that by defining the Paris Agreement targets the States formulated, and agreed to, the overarching goal of limiting warming to "well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels", recognising that this would significantly reduce the risks and impacts of climate change (Article 2 § 1 (a)). Since then, scientific knowledge has developed further and States have recognised that "the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C" and ***thus resolved "to pursue further efforts to limit the temperature increase to 1.5°C" (see Glasgow Climate Pact, paragraph 21****, and Sharm el-Sheikh Implementation Plan, paragraph 4).*

107. (...) The IPCC report in question – IPCC 2018 Special report "1.5°C global warming" (...) – found that (...) any increase in global temperature (such as +0.5°C) was projected to affect human health, with primarily negative consequences (high confidence). Lower risks were projected at 1.5°C than at 2°C for heat-related morbidity and mortality (very high confidence), and for ozone-related mortality if emissions needed for ozone formation remained high (high confidence).

108 (...) In particular, limiting warming to 1.5°C implied [according to IPCC 2018 Special report "1.5°C global warming"] reaching net zero CO_2 emissions ***globally*** *around 2050 and concurrent deep reductions in emissions of non-CO2 forcers (high confidence).*

109. The IPCC report [IPCC 2018 Special report "1.5°C global warming"] sought to quantify mitigation requirements in terms of 1.5°C pathways that refer to "carbon budgets". The report explained that cumulative CO2 emissions would be kept within a budget by reducing global annual CO2 emissions to net zero. This assessment suggested a remaining budget of about 420 GtCO2 for a ***two-thirds chance*** *of limiting warming to* ***1.5°C****, and of about* ***580 GtCO2 for an even chance*** *(medium confidence). At the same time, staying within a remaining carbon budget of 580 GtCO2 implied that CO_2 emissions would have to reach* ***carbon neutrality in about thirty years****, reduced to twenty years for a 420 GtCO2 remaining carbon budget (high confidence). Moreover, non-CO2 emissions contributed to peak warming and affected the remaining carbon budget.*

110. In its subsequent Assessment Reports ("AR"), the IPCC came to similar conclusions confirming and updating its findings in the 2018 Special Report. (...) The report also confirmed the IPCC's earlier findings (high confidence) that there was a near-linear relationship between cumulative anthropogenic CO2 emissions and the global warming they caused. Thus, ***limiting human-induced global warming to a specific level required limiting cumulative CO2 emissions, reaching at least net***

zero CO2 emissions, together with strong reductions in other GHG emissions. *Furthermore, the report nuanced the relevant estimated remaining carbon budgets from the beginning of 2020.* ***It explained that to have a 67% chance of meeting the 1.5°C limit, the remaining global carbon budget was 400 GtCO2 and to have an 83% chance, 300 GtCO2.***

111. In AR6 "Climate Change 2022: Mitigation of Climate Change" (...), the IPCC found that total net anthropogenic GHG emissions had continued to rise during the period 2010-2019. (...) The report further pointed out that a consistent expansion of policies and laws addressing mitigation had led to the avoidance of emissions that would otherwise have occurred. However, global GHG emissions in 2030 associated with the implementation of NDCs announced prior to the Glasgow Climate Conference (COP26) would make it likely that warming would exceed 1.5°C during the twenty-first century. It was likely that limiting warming to below 2°C would then rely on a rapid acceleration of mitigation efforts after 2030. ***Policies implemented by the end of 2020 were projected to result in higher global GHG emissions than those implied by NDCs*** *(high confidence). In other words, according to the findings of the IPCC, the* ***world was currently on a trajectory that would lead to very significant adverse impacts for human lives and well-being***.

113. Furthermore, the report [AR6 "Climate Change 2022: Mitigation of Climate Change"] stressed that global net zero CO2 emissions would be reached in the early 2050s in modelled pathways that limited warming to 1.5°C with no or limited overshoot, and around the early 2070s in modelled pathways that limited warming to 2°C. These pathways also included deep reductions in other GHG emissions. Reaching and sustaining global net zero GHG emissions would result in a gradual decline in warming (high confidence).

114. In the latest AR6 "Synthesis Report: Climate Change 2023", the IPCC noted that human activities, principally through GHG emissions (increasing with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals), had unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 levels between 2011 and 2020. According to the report, human-caused climate change was already affecting many weather and climate extremes in every region across the globe, which had led to widespread adverse impacts and related losses and damages to nature and people (high confidence).

115. The IPCC further stressed that policies and laws addressing mitigation (...) had already been deployed successfully in some countries, leading to avoided and in some cases reduced or removed emissions (...). Global GHG emissions in 2030 implied by NDCs announced by October 2021 made it likely that warming would exceed 1.5°C during the twenty-first century and made it harder to limit warming below 2°C. There were gaps between projected emissions from implemented policies and those from NDCs. Moreover, finance flows fell short of the levels needed to meet climate goals across all sectors and regions (...). (.) At the same time, every increment of global warming would intensify multiple and concurrent hazards. However, deep, rapid and sustained reductions in GHG emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years (...). While some future changes were unavoidable and/or irreversible, they could be limited by deep, rapid and sustained global GHG emissions reductions. The likelihood of abrupt and/or irreversible changes increased

with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increased with higher global warming levels (…). Adaptation options that were feasible and effective today would become constrained and less effective with increasing global warming; losses and damages would also increase and additional human and natural systems would reach adaptation limits (high confidence).

116. In the same report, the IPCC stressed the ***importance of carbon budgets and policies for net zero emissions****. It noted that limiting human-caused global warming required net zero CO2 emissions. Cumulative carbon emissions until the time of reaching net-zero CO2 emissions and the level of GHG emission reductions* ***this decade*** *would largely determine whether warming could be limited to 1.5°C or 2°C. Projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) (…). As regards mitigation pathways, the IPCC noted that all global modelled pathways that limited warming to 1.5°C (>50%) with no or limited overshoot, and those that limited warming to 2°C (>67%), involved rapid and deep and, in most cases, immediate GHG emissions reductions in all sectors this decade.* ***Global net zero CO2 emissions would be reached for these pathway categories in the early 2050s*** *and around the early 2070s, respectively (…).*

117. However, the IPCC stressed that if warming exceeded a specified level such as 1.5°C, it could gradually be reduced again by achieving and sustaining net negative global CO2 emissions, which would require additional deployment of carbon dioxide removal, compared to pathways without overshoot. This would, however, lead to greater feasibility and sustainability concerns as overshoot entailed adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot (…).

118. The IPCC stressed the ***urgency of near-term integrated climate action****. It noted that climate change was a threat to human well-being and planetary health. There was a* ***rapidly closing window of opportunity*** *to secure a liveable and sustainable future for all (…). (…).* ***The choices and actions implemented in this decade would have impacts now and for thousands of years*** *(…).*

119. According to the IPCC, deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (…). On the other hand, ***delayed mitigation and adaptation action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages*** *(…).*

120. The IPCC noted that effective climate action was enabled by political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies and enhanced access to finance and technology. Clear goals, coordination across multiple policy domains and inclusive governance processes facilitated effective climate action. Regulatory and economic instruments could support deep emissions reductions and climate resilience if scaled up and applied widely (…).

B. Relevant legal framework and practice

64 In paras. 138 ff., the Court refers to COP 27 (November 22) and COP 28 (December 23). Regarding the latter, the Court referred to the synthesis report on the technical dialogue of the First Global Stocktake under the Paris Agreement:

> *139. In preparation for the UNFCCC Conference of the Parties (COP28) in Dubai, held between 30 November and 12 December 2023, the synthesis report on the technical dialogue of the first global stocktake under the Paris Agreement, made the following key findings.*
>
> *(…)*
>
> *Key finding 3: systems transformations open up many opportunities, but rapid change can be disruptive. A focus on inclusion and **equity** can increase ambition in climate action and support.*
>
> *Key finding 4: global emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to raise ambition and implement existing commitments **in order to limit warming to 1.5°C above pre-industrial levels**.*
>
> *Key finding 5: much more ambition in action and support is needed in implementing domestic mitigation measures and setting more ambitious targets in NDCs to realize existing and emerging opportunities across contexts, **in order to reduce global GHG emissions by 43 per cent by 2030 and further by 60 per cent by 2035 compared with 2019 levels and reach net zero CO2 emissions by 2050 globally.***
>
> *(…)*
>
> *Key finding 14: scaled-up mobilization of support for climate action in developing countries entails **strategically deploying international public finance, which remains a prime enabler for action**, and continuing to enhance effectiveness, including access, ownership and impacts.*
>
> *Key finding 15:* **making financial flows** *– international and domestic, public and private – **consistent with a pathway towards low GHG emissions** and climate-resilient development entails creating opportunities to unlock trillions of dollars and shift investments to climate action across scales.*
>
> *(…).*

65 In paras. 140, the Court refers to relevant parts of the COP 28 First Global Stocktake:

> *140. The relevant parts of the COP28 First Global Stocktake provide as follows:*
>
> *"(…)*
>
> *Also recalling Article 2, paragraph 2, of the Paris Agreement, which provides that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,*

5. Expresses serious concern that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and ***emphasizes the need for urgent action and support to keep the 1.5°C goal within reach and to address the climate crisis in this critical decade****;*

6. Commits to accelerate action ***in this critical decade*** *on the* ***basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances*** *and in the context of sustainable development and efforts to eradicate poverty;*

16. Notes the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(…)

(c) ***That feasible, effective and low-cost mitigation options are already available in all sectors to keep 1.5°C within reach in this critical decade*** *with the necessary cooperation on technologies and support;*

17. Notes with concern the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had earlier indicated that developed countries ***must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved****;*

II. Collective progress towards achieving the purpose and long-term goals of the Paris Agreement … A. Mitigation …

25. ***Expresses concern that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted*** *and acknowledges that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5°C; …*

28. Further recognizes the need for deep, rapid and sustained reductions in [GHG] emissions in line with 1.5°C pathways and calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches: …

(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, ***accelerating action in this critical decade****, so as to achieve net zero by 2050* ***in keeping with the science****; (…)"*

66 In paras. 141 ff., the Court refers to the Aarhus Convention:

141. The relevant parts of the 1998 Aarhus Convention read as follows:

"(…)

Article 2 Definitions

4. 'The public' means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

*5. 'The **public concerned'** means the **public affected** or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."*

142. The relevant parts of the Aarhus Convention Implementation Guide provide as follows (…):

*"While narrower than the 'public,' the 'public concerned' is nevertheless still very broad. **With respect to the criterion of 'being affected', this is very much related to the nature of the activity in question**. Some of the activities subject to article 6 of the Convention may potentially affect a large number of people. For example, in the case of pipelines, the public concerned is usually in practice counted in the thousands, while in the case of nuclear power stations the competent authorities may consider the public concerned to count as many as several hundred thousand people across several countries.*

(…)"

67 In para. 145, the Court states that 45 out of 46 member States of the council of Europe voted in favour of the adoption of the UN Resolution 76/300 on the human right to a clean, healthy and sustainable environment on 28 July 2022.

144. Upon the invitation of the Human Rights Council formulated in its Resolution 48/13 of 8 October 2021, the General Assembly of the United Nations adopted its Resolution 76/300 on the human right to a clean, healthy and sustainable environment on 28 July 2022.

145. It was adopted with 161 votes in favour (of the 169 member States present), 8 abstentions and no votes against. 45 of the 46 member States of the Council of Europe voted in favour.

147. Its four operative paragraphs provide as follows:

"(…)

*3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment **requires the full implementation of the multilateral environmental agreements under the principles of international environmental law**;*

4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all."

68 In para. 148, the Court refers to the first Resolution on the issue on global climate protection:

*148. **Nearly every year since** its first Resolution on the subject, namely Resolution no. 43/53 on the protection of global climate for present and future generations of mankind adopted on 6 December **1988**, **the issue of global climate protection for future generations has been put on the agenda** of the General Assembly, resulting in the adoption of numerous resolutions.*

69 In para. 164, the Court refers to the 2019 report to the General Assembly (A/74/161), where the Special Rapporteur built on the 2018 framework principles on human rights and the environment and detailed the content of states' obligations:

164. In the 2019 report to the General Assembly (A/74/161), the Special Rapporteur built on the above-mentioned 2018 framework principles on human rights and the environment (…) and detailed the content of State obligations (…):

"(…)

65. With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right. States also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage.

(…)

68. States have an obligation to cooperate to achieve a low-carbon, climate resilient and sustainable future, which means sharing information; the transfer of zero-carbon, low-carbon and high-efficiency technologies from wealthy to less wealthy States; building capacity; increasing spending on research and development related to the clean energy transition; honouring international commitments; and ensuring fair, legal and durable solutions for migrants and displaced persons. ***Wealthy States must contribute their fair share towards the costs of mitigation and adaptation in low-income countries, in accordance with the principle of common but differentiated responsibilities****. Climate finance to low-income countries should be composed of grants, not loans. It violates basic principles of justice to force poor countries to pay for the costs of responding to climate change when wealthy countries caused the problem.*

69. Climate actions, including under new mechanisms being negotiated pursuant to article 6 of the Paris Agreement, must be designed and implemented to avoid threatening or violating human rights (…).

(…)

74. A failure to fulfil international climate change commitments is a prima facie violation of the State's obligations to protect the human rights of its citizens. …

75. A dramatic change of direction is needed. To comply with their human rights obligations, developed States and other large emitters must reduce their emissions at a rate consistent with their international commitments. To meet the Paris target of limiting warming to 1.5°C, States must submit ambitious nationally determined contributions by 2020 that will put the world on track to reducing [GHG] emissions by at least 45 per cent by 2030 (as calculated by the Intergovernmental Panel on Climate Change). All States should prepare rights-based deep decarbonization plans intended to achieve net zero carbon emissions by 2050, in accordance with article 4, paragraph 19, of the Paris Agreement. Four main categories of actions must be taken: addressing society's addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States."

70 In para. 192, the Court noted that the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution entitled "The climate crisis and the rule of law", including:

*"5.1 promote the rule of law and employ a transparent, accountable and democratic legislative process for implementing the aim of 'net zero emissions', based on **clear and credible plans** to meet commitments to keep the global temperature increase **in line with** the preferred objective of the Paris Agreement, amounting to an increase in average temperatures of **1.5°C**;"*

71 In para. 199, the Court notes that in 2020, the European Commission for Democracy through Law ("the Venice Commission") addressed the question of judicial control in the field of environmental protection:

*"(...) However, an important argument to counter such a conclusion is that the protection of the environment is not like the traditional human rights conflict, where the minority needs protection against the majority. **In the area of protection of the environment, there is a totally new dimension: the protection of the rights of future generations.** As the future generations do not take part in present day democracy and do not vote in present day elections, the judicial branch appears to be best placed to protect the future generations against the decisions of present-day politicians."*

72 In para. 200 the Court refers to Appendix V of the Reykjavík Declaration where the following was declared:

"(...) Together we commit to:

*v. initiating the 'Reykjavík process' of strengthening the work of the Council of Europe in this field, with the aim of making the environment a visible priority for the Organisation. The process will focus and streamline the Organisation's activities, **with a view to promoting co-operation among member States**. We will identify the challenges raised by **the triple planetary crisis of pollution, climate change and loss of biodiversity** for human rights and contribute to the development of common responses thereto, while facilitating the participation of youth in these discussions. We will do this by enhancing and co-ordinating the existing Council of Europe activities related to the environment and we encourage the establishment of a new **intergovernmental committee on environment and human rights** ('Reykjavík Committee')."*

73 In paras. 201 ff. the Court lays down the EU law, also stating that in the EU, the legality of acts can be reviewed (Art. 263 of the Treaty on European Union). The Court further notes in para. 211 that the European Climate Law also requires the projected indicative Union GHG budget to be established and based on the best available science.

74 In para. 227 the Court noted that in January 2023, a new request for an Advisory Opinion was submitted to the Inter-American Court of Human Rights by Colombia and Chile. They asked the court to clarify the scope of State obligations, both in their individual and collective dimensions, within the framework of international human rights law, to respond to the climate emergency. This request emphasised paying special attention to the differentiated impacts of this emergency on individuals from diverse

regions and population groups, as well as on nature and on human survival on the planet.

75 In para. 246 the Court refers to the Vice-President of the Conseil d'État, Bruno Lasserre, who made the following remarks on the first decisions given by the administrative courts in an address to the Court of Cassation on 21 May 2021 entitled "L'environnement: les citoyens, le droit, les juges" ("The environment: citizens, the law and judges"):

«Finally, the Conseil d'État has adapted to current efforts to tackle climate change by inaugurating a new type of review, which could be termed a 'pathway review'. The time-limits laid down in law for achievement of the targets may be distant – 2030, 2040, and even 2050 – ***but for the courts to wait ten, twenty or thirty years to verify whether they have been achieved would mean denying the urgency of taking action now and depriving their review of all meaningful effect from the outset, given the very high inertia of the climate system****. A pathway review is thus akin to monitoring compliance in advance. This means that* ***the court must be satisfied,*** *at the point at which it takes its decision,* ***not that the targets have been achieved, but that they may be achieved, that they are in the process of being achieved, that they form part of a credible and verifiable pathway.****»*

C. The Law

1. Scope of the complaint

279. In the case at hand, it is important to note that it has been accepted in the reports by the relevant Swiss authorities, and elsewhere, that the GHG emissions attributable to Switzerland through the import of goods and their consumption form a significant part (an estimate of 70% for 2015) of the overall Swiss GHG footprint. (...).

280. It ***would therefore be difficult, if not impossible, to discuss Switzerland's responsibility for the effects of its GHG emissions on the applicants' rights without taking into account the emissions generated through the import of goods and their consumption*** *or, as the applicants labelled them, "embedded emissions".*

283. (...) This is, of course, ***without prejudice to the examination of the actual effects of "embedded emissions"*** *(namely Switzerland's import of goods for household consumption)* ***on the State's responsibility under the Convention****.*

2. Preliminary points regarding the alleged violation of Art. 2 and 8 ECHR

410. At the outset, the Court notes that climate change is one of the most pressing issues of our times. (...). The Court is also aware that the damaging effects of climate change raise an issue of intergenerational burden-sharing (...) and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities.

411. The Court, however, can deal with the issues arising from climate change only within the limits of the exercise of its competence under Article 19 of the Convention, (...). In this regard, the Court is, and must remain, mindful of the fact that to a large extent measures designed to combat climate change and its adverse effects require

legislative action both in terms of the policy framework and in various sectoral fields. In a democracy, which is a fundamental feature of the European public order expressed in the Preamble to the Convention together with the principles of subsidiarity and shared responsibility (...), such action thus necessarily depends on democratic decision-making.

412. Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements. The legal basis for the Court's intervention is always limited to the Convention, (...). The relevant legal framework determining the scope of judicial review by domestic courts may be considerably wider and will depend on the nature and legal basis of the claims introduced by litigants.

413. At the same time, the Court must also be mindful of the fact that the ***widely acknowledged inadequacy of past State action*** *to combat climate change globally entails an aggravation of the risks of its adverse consequences, and the ensuing threats arising therefrom, for the enjoyment of human rights – threats already recognised by governments worldwide.* ***The current situation therefore involves compelling present-day conditions, confirmed by scientific knowledge, which the Court cannot ignore in its role as a judicial body tasked with the enforcement of human rights****. Given the necessarily primary responsibility of the legislative and executive branches and the inherently collective nature of both the consequences and the challenges arising from the adverse effects of climate change, however, the question of who can seek recourse to judicial protection under the Convention in this context is not just a question of who can seek to address this common problem through the courts, first domestically and subsequently by engaging the Court, but raises wider issues of the separation of powers.*

415. The Court's existing case-law in environmental matters concerns situations involving specific sources from which environmental harm emanates. (...)

416. In the context of climate change, the key characteristics and circumstances are significantly different. (...)

418. (...) However, ***without effective mitigation*** *(which is at the centre of the applicants' arguments in the present case; ...),* ***adaptation measures cannot in themselves suffice to combat climate change*** *(...).*

420. In this connection, the Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations. While the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change (see paragraph 119 above) and that, at the same time, they have no possibility of participating in the relevant current decision-making processes. By their commitment to the UNFCCC, the States Parties have undertaken the obligation to

protect the climate system for the benefit of present and future generations of humankind (see paragraph 133 above; Article 3 of the UNFCCC). ***This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change.*** *In the present context, having regard to the prospect of aggravating consequences arising for future generations,* ***the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.***

421. Lastly, while the challenges of combating climate change are global, both the relative importance of various sources of emissions and the necessary policies and measures required for achieving ***adequate*** *mitigation and adaptation may vary to some extent from one State to another depending on several factors such as the structure of the economy, geographical and demographic conditions and other societal circumstances. Even if in the longer term, climate change poses existential risks for humankind, this does not detract from the fact that in the short term the necessity of combating climate change involves various conflicts, the weighing-up of which falls, as stated previously, within the democratic decision-making processes, complemented by judicial oversight by the domestic courts and this Court.*

422. Because of these fundamental differences, it would be neither adequate nor appropriate to follow an approach consisting in directly transposing the existing environmental case-law to the context of climate change. ***The Court considers it appropriate to adopt an approach which both acknowledges and takes into account the particularities of climate change and is tailored to addressing its specific characteristics.*** *In the present case, therefore, while drawing some inspiration from the principles set out in the Court's existing case-law, the Court will seek to develop a more appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change.*

3. General considerations relating to climate-change cases regarding alleged violation of Art. 2 and 8 ECHR

a) Causation

424. (...) In the context of human rights-based complaints against States, issues of causation (...) have a bearing on the assessment of victim status as well as the substantive aspects of the State's obligations and responsibility under the Convention.

425. The first dimension of the question of causation relates to the link between GHG emissions – and the resulting accumulation of GHG in the global atmosphere – and the various phenomena of climate change. This is a matter of scientific knowledge and assessment. The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. In general terms, this issue pertains to the legal question of how the scope of human rights protection is to be understood as regards the impacts arising for human beings from an existing degradation, or risk of degradation, in their living conditions. The third concerns the link, at the individual level, between a harm, or risk of harm, allegedly affecting specific persons or groups of

persons, and the acts or omissions of State authorities against which a human rights-based complaint is directed. The fourth relates to the attributability of responsibility regarding the adverse effects arising from climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of GHG emissions.

b) Issues of proof (first causation dimension)

429. The Court also relies on studies and reports by relevant international bodies as regards the environmental impacts on individuals (see Tătar, cited above, § 95). ***As regards climate change, the Court points to the particular importance of the reports prepared by the IPCC,*** *(...).*

430. Lastly, the Court attaches particular importance to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case (...). (...) the Court is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case.

c) Effects of climate change on the enjoyment of Convention rights (second causation dimension)

431. In recent times there has been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law (...).

432. ***The findings of the IPCC reports noted in paragraphs 107 to 120 above have not been challenged or called into doubt by the respondent or intervening States****. It should also be noted that the clear indications as regards the adverse effects of climate change, both existing and those associated with an overshoot of* ***1.5°C global temperature rise****, noted by the IPCC, have been shared by many environmental experts and scientists intervening as third parties in the present proceedings before the Court (...).*

433. Moreover, the IPCC findings correspond to the position taken, in principle, by the States in the context of their international commitments to tackle climate change. (...). ***Moreover, the respondent Government in the present case, as well as the many third-party intervener Governments, have not contested that there is a climate emergency*** *(..).*

434. ***The Court cannot ignore the above-noted developments and considerations****. On the contrary, it should be recalled that the Convention is a* ***living instrument which must be interpreted in the light of present-day conditions****, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies (see Demir and Baykara v. Turkey [GC], no. 34503/97, § 146, ECHR 2008). Indeed, an* ***appropriate and tailored approach*** *as regards the various*

*Convention issues which may arise **in the context of climate change**, (...), needs to take into account the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights.*

*436. In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that **anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5oC above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target.***

d) The question of causation and positive obligations in the climate-change context (third causation dimension)

*439. In the context of climate change, the particularity of the issue of causation becomes more accentuated. The adverse effects on and risks for specific individuals or groups of individuals living in a given place arise from aggregate GHG emissions globally, and the emissions originating from a given jurisdiction make up only part of the causes of the harm. Accordingly, the causal link between the acts or omissions on the part of State authorities in one country, and the harm, or risk of harm, arising there, is necessarily more tenuous and indirect compared to that in the context of local sources of harmful pollution. Furthermore, from the perspective of human rights, the essence of the relevant State duties in the context of climate change relates to the reduction of the risks of harm for individuals. Conversely, failures in the performance of those duties entail an aggravation of the risks involved, although the individual exposures to such risks will vary in terms of type, severity and imminence, depending on a range of circumstances. Accordingly, in this context, issues of individual victim status or the specific content of State obligations **cannot be determined on the basis of a strict conditio sine qua non requirement**.*

*440. It is therefore necessary to further adapt the approach to these matters, taking into account the special features of the problem of climate change in respect of which the State's positive obligations will be triggered, depending on a **threshold of severity of the risk of adverse consequences on human lives, health and well-being**. (...)*

e) The issue of the proportion of State responsibility (fourth causation dimension)

*442. For its part, the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). **It follows, therefore, that each State has its own share of responsibilities to take measures***

to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State *(see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.*

444. Lastly, as regards the "drop in the ocean" argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it should be noted that in the context of a State's positive obligations under the Convention, the Court has consistently held that it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (...). In the context of climate change, this principle should also be understood in the light of Article 3 § 3 of the UNFCCC according to which States should take measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.

f) Scope of the Court's assessment

445. The Court has repeatedly stressed that no Article of the Convention is specifically designed to provide general protection of the environment as such (...)

446. At the same time, the Court has often dealt with various environmental problems deemed to affect the Convention rights of individuals, particularly Article 8 (see Hatton and Others, cited above, § 96). (...)

449. The Court is mindful of the fact that in a context such as the present one ***it may be difficult to clearly distinguish issues of law from questions of policy and political choices*** *and, therefore, of the fundamentally subsidiary role of the Convention, particularly given the complexity of the issues involved with regard to environmental policy-making (see Dubetska and Others v. Ukraine, no. 30499/03, § 142, 10 February 2011). It has stressed that national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate the relevant needs and conditions.* ***In matters of general policy, or political choices, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker is given special weight*** *(see Hatton and Others, cited above, § 97).*

450. However, this does not exclude the possibility that where complaints raised before the Court relate to State policy with respect to an issue affecting the Convention rights of an individual or group of individuals, ***this subject matter is no longer merely an issue of politics or policy but also a matter of law having a bearing on the interpretation and application of the Convention****. In such instances,* ***the Court retains competence, albeit with substantial deference to the domestic policy-maker and the measures resulting from the democratic process concerned and/or the judicial review by the domestic courts****. Accordingly, the* ***margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with a European supervision by the Court****, which*

must be satisfied that the effects produced by the impugned national measures were compatible with the Convention.

451. It follows from the above considerations that ***the Court's competence in the context of climate-change litigation cannot, as a matter of principle, be excluded****. Indeed, given the necessity of addressing the urgent threat posed by climate change, and bearing in mind the general acceptance that climate change is a common concern of humankind (...), there is force in the argument put forward by the UN Special Rapporteurs that* ***the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights*** *(...).*

g) Relevant principles regarding the interpretation of the Convention

454. The Court reiterates that it only has the authority to ensure that the Convention is complied with. (...)

455. Nevertheless, the interpretation and application of the rights provided for under the Convention can and must be influenced both by factual issues and developments affecting the enjoyment of the rights in question and also by relevant legal instruments designed to address such issues by the international community. The Court has consistently held that the Convention should be interpreted, as far as possible, in harmony with other rules of international law (ibid.). ***Moreover, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement*** *(see Fedotova and Others v. Russia [GC], nos. 40792/10 and 2 others, § 167, 17 January 2023).*

456. The ***Court cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights*** *(...). This consideration relates, in particular, to the consensus flowing from the international-law mechanisms to which the member States voluntarily acceded and the related requirements and commitments which they undertook to respect (...), such as those under the Paris Agreement. The Court must bear these considerations in mind when conducting its assessment under the Convention (...).*

457. At the same time, the Court must also bear in mind its subsidiary role and the necessity of affording the Contracting States a margin of appreciation in the implementation of policies and measures to combat climate change, as well as the need to ***observe appropriate respect for the prevailing constitutional principles, such as those relating to the separation of powers****.*

4. Victim status and standing in the climate change context regarding the alleged violation of Art. 2 and 8 ECHR

a) Victim status of individuals in the climate change context

478. The Court notes that there is ***cogent scientific evidence demonstrating that climate change has already contributed to an increase in morbidity and mortality, especially among certain more vulnerable groups****, that it actually creates such effects and that, in the absence of resolute action by States, it risks progressing to the point of being irreversible and disastrous (see paragraphs 104-120 above). At the same time, the* ***States****, being in control of the causes of anthropogenic*

climate change, ***have acknowledged the adverse effects of climate change and have committed themselves – in accordance with their common but differentiated responsibilities and their respective capabilities – to take the necessary mitigation measures*** *(to reduce GHG emissions) and adaptation measures (to adapt to climate change and reduce its impacts). These considerations indicate that a legally relevant relationship of causation may exist between State actions or omissions (causing or failing to address climate change) and the harm affecting individuals, as noted in paragraph 436 above.*

479. Given the nature of climate change and its various adverse effects and future risks, ***the number of persons affected, in different ways and to varying degrees, is indefinite****. (...). The critical issues arise from failures to act, or inadequate action. In other words, they arise from omissions. In key respects, the deficiencies reside at the level of the relevant legislative or regulatory framework. The need, in this context, for a* ***special approach to victim status****, and its delimitation, therefore arises from the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely. The outcome of legal proceedings in this context will inevitably have an effect beyond the rights and interests of a particular individual or group of individuals, and* ***will inevitably be forward-looking, in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences.***

480. That being said, the Court notes that the assessment of victim status in the present context of complaints concerning alleged omissions in general measures relating to the prevention of harm, or the reduction of the risk of harm, affecting indefinite numbers of persons ***is without prejudice to the determination of victim status in circumstances where complaints by individuals concern alleged violations arising from a specific individual loss or damage already suffered by them*** *(see, for instance, Kolyadenko and Others, cited above, §§ 150-55).*

481. The ***question for the Court in the present case*** *is* ***how and to what extent allegations of harm linked to State actions and/or omissions*** *in the context of climate change, affecting individuals' Convention rights (such as the right to life under Article 2 and/or the right to respect for private and family life under Article 8),* ***can be examined without undermining the exclusion of actio popularis from the Convention system and without ignoring the nature of the Court's judicial function****, which is by definition reactive rather than proactive.*

483. The Court's case-law on victim status is premised on the existence of a direct impact of the impugned action or omission on the applicant or a real risk thereof. However, ***in the climate-change context, everyone may be, one way or another and to some degree, directly affected, or at a real risk of being directly affected, by the adverse effects of climate change****. Leaving aside the issue of jurisdiction, the fact remains that* ***potentially a huge number of persons could claim victim status under the Convention on this basis****. While it is true that in the context of general situations/measures, the class of persons who could claim victim status "may indeed be very broad" (see Shortall and Others, cited above, § 53), it would not sit well with the exclusion of actio popularis from the Convention mechanism and the effective functioning of the right of individual application to accept the existence of victim status in the climate-change context without sufficient and careful qualification.*

484. ***If the circle of "victims" within the overall population of persons under the jurisdiction of the Contracting Parties actually or potentially adversely affected is drawn in a wide-ranging and generous manner, this would risk disrupting national constitutional principles and the separation of powers by opening broad access to the judicial branch*** *as a means of prompting changes in general policies regarding climate change. If, on the other hand,* ***this circle is drawn too tightly and restrictively, there is a risk that even obvious deficiencies or dysfunctions in government action or democratic processes could lead to the Convention rights of individuals and groups of individuals being affected without them having any judicial recourse before the Court.*** *In addition, in view of the considerations of* ***intergenerational burden-sharing*** *related to the impacts and risks of climate change,* ***the members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct representational disadvantage*** *(see paragraph 420 above). The need to ensure, on the one hand, effective protection of the Convention rights, and, on the other hand, that the criteria for victim status do not slip into de facto admission of actio popularis is particularly acute in the present context.*

485. In this regard, although the lack of State action, or insufficient action, to combat climate change does entail a situation with general effect, the Court does not consider that the case-law concerning "potential" victims (..), could be applied here. In the context of climate change, this could cover virtually anybody and would therefore not work as a limiting criterion. Everyone is concerned by the actual and future risks, in varying ways and to varying degrees, and may claim to have a legitimate personal interest in seeing those risks disappear.

486. Therefore, having regard to the special features of climate change, when determining the criteria for victim status (...) the Court will rely on distinguishing criteria. (...)

487. In sum, the Court finds that in order to claim victim status under Article 34 of the Convention in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, an applicant needs to show that he or she was personally and directly affected by the impugned failures. This would require the Court to establish, (..), the following circumstances concerning the applicant's situation: (a) the applicant must be ***subject to a high intensity of exposure to the adverse effects of climate change****, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a* ***pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm****.*

488. The ***threshold for fulfilling these criteria is especially high****. In view of the exclusion of actio popularis (...) whether an applicant meets that threshold will depend on a careful assessment of the concrete circumstances of the case. In this connection, the Court will have due regard to circumstances such as the prevailing local conditions and individual specificities and vulnerabilities. The Court's assessment will also include, but will not necessarily be limited to, considerations relating to: the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability.*

b) Standing of associations in the climate change context

489. As the Court already noted in Gorraiz Lizarraga and Others (...), in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. ***This is especially true in the context of climate change, which is a global and complex phenomenon****. It has multiple causes and its adverse effects are not the concern of any one particular individual, or group of individuals, but are rather "a common concern of humankind" (see the Preamble to the UNFCCC). Moreover,* ***in this context where intergenerational burden-sharing assumes particular importance*** *(...), collective action through associations or other interest groups* ***may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard*** *and through which they can seek to influence the relevant decision-making processes.*

490. These general observations (...) are reflected in (...) the ***Aarhus Convention****. That Convention recognises that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations" (...).*

491. The Aarhus Convention also emphasises the importance of the role which non-governmental organisations play in the context of environmental protection. (...)

492. The Court further notes that the EU has developed a set of legal instruments concerning the implementation of the Aarhus Convention (...).

493. In this connection, it should also be noted that a comparative study from 2019 found that broad legal standing was granted by law and in practice in a number of EU member States (thirteen out of twenty-eight at the time). (...)

494. The findings of the above studies were confirmed by a broader comparative survey conducted by the Court for the purposes of the present proceedings. (...)

495. In the light of the above considerations, in order to devise an approach to the matter in the present case, in which the applicant association also claims victim status, the ***Court notes some key principles which must guide its decision in that respect****.*

496. First, it is necessary to make, and to maintain, the distinction between the victim status of individuals and the legal standing of representatives who are acting on behalf of persons whose Convention rights are alleged to be violated (...). (...) there seems to be no reason to call into question the principle in the case-law that an association cannot rely on health considerations or nuisances and problems associated with climate change which can only be encountered by natural persons (...). This, by the nature of things, places a constraint on the possibility of granting victim status to an association with regard to any substantive issue under Articles 2 and/or 8 of the Convention.

497. Secondly, there has been an evolution in contemporary society as regards recognition of the importance of associations to litigate issues of climate change on behalf of affected persons. Indeed, ***climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical***

resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals *(...)*

498. The ***specific considerations relating to climate change weigh in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected****. Indeed, (...) it may be possible for an association to have standing before the Court despite the fact that it cannot itself claim to be the victim of a violation of the Convention.*

499. Moreover, the ***special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context*** *(...), speak in favour of recognising the standing of associations before the Court in climate-change cases. In view of the* ***urgency of combating the adverse effects of climate change and the severity of its consequences, including the grave risk of their irreversibility, States should take adequate action notably through suitable general measures to secure not only the Convention rights of individuals who are currently affected by climate change, but also those individuals within their jurisdiction whose enjoyment of Convention rights may be severely and irreversibly affected in the future in the absence of timely action.*** *The Court therefore considers it appropriate in this specific context to acknowledge the importance of making allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.*

500. However, (...), the ***exclusion of actio popularis*** *under the Convention requires that the possibility for associations to lodge applications before the Court* ***be subject to certain conditions****. It is clear that the Convention mechanism cannot accept an abstract complaint about a general deterioration of the living conditions* ***of people without considering its impact on a particular person or group of persons****.*

501. In this connection, when devising the ***test for the standing of associations in climate-change litigation*** *under the Convention, the Court finds it pertinent* ***to have regard to the Aarhus Convention*** *(...).The Court must, however,* ***be mindful of the difference between the basic nature and purpose of the Aarhus Convention****, which is designed to enhance public participation in environmental matters,* **and that of the Convention, which is designed to protect individuals' human rights.** *(...) The Court must be mindful of the fact that its own approach cannot result in an acceptance of actio popularis (...).*

502. (...) the following factors will determine the standing of associations before the Court in the present context. In order to be recognised as having locus standi to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) ***lawfully established*** *in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the* ***defence of the human rights of its members or other affected individuals within the jurisdiction concerned****, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be*

regarded as ***genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention****. In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice. In accordance with the specific features of recourse to legal action by associations in this context (see paragraphs 497-499 above),* ***the standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned will not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals*** *in the climate-change context as established in paragraphs 487 to 488 above.*

503. In the event of existing limitations regarding the standing before the domestic courts of associations meeting the above Convention requirements, the Court may also, in the interests of the proper administration of justice, take into account whether, and to what extent, its individual members or other affected individuals may have enjoyed access to a court in the same or related domestic proceedings.

505. Having regard to the approach outlined in paragraph 459 above, the Court will examine the issues of the victim status of applicants nos. 2-5 and the standing of the applicant association in the context of its assessment of the applicability of Articles 2 and 8 of the Convention.

5. Applicability of Art. 2 ECHR in the climate change context

509. It follows from the above-noted general principles that complaints concerning the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an ***activity which is, by its very nature, capable of putting an individual's life at risk****. Indeed, the applicants referred the Court to* ***compelling scientific evidence showing a link between climate change and an increased risk of mortality, particularly in vulnerable groups*** *(…). At present, there is nothing in the arguments provided by the respondent Government or the intervening Governments to call into question the relevance and reliability of this evidence.*

*511. The applicability of Article 2, however, cannot operate in abstracto in order to protect the population from any possible kind of environmental harm arising from climate change. (…) in order for Article 2 to apply in the context of an activity which is, by its very nature, capable of putting an individual's life at risk, there has to be a "****real and imminent" risk*** *to life. This may accordingly extend to complaints of State action and/or inaction in the context of climate change, notably in circumstances such as those in the present case, considering that the IPCC has found with high confidence that older adults are at "highest risk" of temperature-related morbidity and mortality.*

513. In sum, in order for Article 2 to apply to complaints of State action and/or inaction in the context of climate change, it needs to be determined that there is a "real and imminent" risk to life. However, such risk to life in the climate-change context must be understood in the light of the fact that there is a grave risk of inevitability and

irreversibility of the adverse effects of climate change, the occurrences of which are most likely to increase in frequency and gravity. ***Thus, the "real and imminent" test may be understood as referring to a serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity of the threat to the harm complained of by the applicant.*** *This would also imply that where the victim status of an individual applicant has been established in accordance with the criteria set out in paragraphs 487 to 488 above, it would be possible to assume that a serious risk of a significant decline in a person's life expectancy owing to climate change ought also to trigger the applicability of Article 2.*

6. Applicability of Art. 8 ECHR in the climate change context

519. Drawing on the above considerations, and having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals (...), Article 8 must be seen as encompassing a ***right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life****.*

520. However, in this context, ***the question of "actual interference" or the existence of a relevant and sufficiently serious risk entailing the applicability of Article 8 essentially depends on the assessment of similar criteria to those set out in paragraphs 487 to 488 above concerning the victim status of individuals, or in paragraph 502 above concerning the standing of associations****. These criteria are therefore determinative for establishing whether Article 8 rights are at stake and whether this provision applies. In each case, these are matters that remain to be examined on the facts of a particular case and on the basis of the available evidence.*

7. Applicability of Arts. 2 and 8 ECHR in the present case

a) Applicability of Art. 8 ECHR confirmed for association

522. The FSC and the FAC limited their assessment of standing to the individual applicants, considering it unnecessary to examine that of the applicant association. As a result, the Court does not have the benefit of the assessment of the legal status of the applicant association under domestic law or of the nature and extent of its activities within the respondent State.

523. (...) Given the membership basis and representativeness of the applicant association, as well as the purpose of its establishment, the Court accepts that it represents a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State (see paragraph 497 above). The Court, furthermore, notes that the individual applicants did not have access to a court in the respondent State. Thus, viewed overall, the grant of standing to the applicant association before the Court is in the interests of the proper administration of justice.

524. Having regard to the above considerations, the Court finds that the applicant association is lawfully established, it has demonstrated that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members and other affected individuals against the threats arising from climate change in the respondent State and that it is genuinely qualified and ***representative***

to act on behalf of those individuals who may arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention *(see paragraph 519 above).*

526. Accordingly, it follows that the applicant association has the necessary locus standi in the present proceedings and that Article 8 is applicable to its complaint. (...)

b) Applicability of Art. 8 ECHR denied for individual applicants

527. Two key criteria have been set out for recognising the victim status of natural persons in the climate-change context: (a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection (see paragraphs 487-488 above). The threshold for fulfilling these criteria is especially high (see paragraph 488 above).

529. (...) the applicants provided information and evidence showing how climate change affects older women in Switzerland, in particular in relation to the increasing occurrence and intensity of heatwaves. ***The data provided by the applicants, emanating from domestic and international expert bodies – the relevance and probative value of which has not been called into question – shows that several summers in recent years have been among the warmest summers ever recorded in Switzerland and that heatwaves are associated with increased mortality and morbidity, particularly in older women*** *(...).*

530. Older people have been found by the IPCC to belong to some of the most vulnerable groups in relation to the harmful effects of climate change on physical and mental health. Similar findings were made by the Swiss FOEN, (...) In this context, older people were found to be particularly at risk. Moreover, the adverse effects of climate change on older women, and the need to protect them from the adverse effects of climate change, have been stressed in many international documents.

531. ***While the above findings undoubtedly suggest that the applicants belong to a group which is particularly susceptible to the effects of climate change, that would not, in itself, be sufficient to grant them victim status*** *within the meaning of the criteria set out in paragraphs 487 to 488 above. It is necessary to establish, in each applicant's individual case, that the requirement of a particular level and severity of the adverse consequences affecting the applicant concerned is satisfied including the applicants' individual vulnerabilities which may give rise to a pressing need to ensure their individual protection.*

532. In this connection, as regards applicants nos. 2-4, it should be noted that in their written declarations and their medical records they provided accounts of the various difficulties they encountered during heatwaves, including the effects on their medical conditions. They also submitted that they needed to take various personal adaptation measures during heatwaves.

533. However, ***while it may be accepted that heatwaves affected the applicants' quality of life****, it is* ***not apparent*** *from the available materials* ***that they were exposed to the adverse effects of climate change, or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection, not least given the high threshold which necessarily applies to the fulfilment of the criteria set out in paragraphs 487 to 488 above****. It cannot be said that the applicants suffered from any*

critical medical condition whose possible aggravation linked to heatwaves could not be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation given the extent of heatwaves affecting that country (…). It should also be reiterated that victim status in relation to future risk is only exceptionally admitted by the Court and the individual applicants have failed to demonstrate that such exceptional circumstances exist in their regard (…).

c) Not necessary to analyse applicability of Art. 2 ECHR

536. While Article 8 undoubtedly applies in the circumstances of the present case as regards the complaints of the applicant association (…), whether those alleged shortcomings also had such life-threatening consequences as could trigger the applicability of Article 2 is more questionable. However, for the reasons stated in paragraphs 537 and 538 below, the Court finds it unnecessary to analyse further the issues pertinent to the threshold of applicability of Article 2.

8. Merits regarding Art. 8 ECHR

a) General principles

538. To a great extent the Court has applied the same principles as those set out in respect of Article 2 when examining cases involving environmental issues under Article 8 (…)

*(a) The States have a **positive obligation to put in place the relevant legislative and administrative framework designed to provide effective protection** of human health and life. (…)*

*(b) The States also have an **obligation to apply that framework effectively in practice**; indeed, regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Convention is intended to protect effective rights, not illusory ones. The relevant measures must be applied **in a timely and effective manner** (…)*

(c) In assessing whether the respondent State complied with its positive obligations, the Court must consider whether, (…) the State remained within its margin of appreciation. In cases involving environmental issues, the State must be allowed a wide margin of appreciation (…).

(d) The choice of means is in principle a matter that falls within the State's margin of appreciation; even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means. (…)

*(e) **While it is not in the Court's remit to determine what exactly should have been done, it can assess whether the authorities approached the matter with due diligence** and gave consideration to all competing interests (…).*

(f) The State has a positive obligation to provide access to essential information enabling individuals to assess risks to their health and lives (…).

(g) In assessing whether the respondent State complied with its positive obligations, the Court must consider the particular circumstances of the case. The scope of the positive obligations imputable to the State in the particular circumstances will depend

on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation (...).

*539. **In environmental cases examined under Article 8 of the Convention, the Court has frequently reviewed the domestic decision-making process**, taking into account that the procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation (...). In this context, the Court has had particular regard to the following principles and considerations:*

*(a) The complexity of the issues involved with regard to environmental policy-making renders the Court's role primarily a subsidiary one. The Court must therefore first examine **whether the decision-making process was adequate** (...);*

*(b) The Court is required to consider all the procedural aspects, including the type of policy or decision involved, **the extent to which the views of individuals were taken into account throughout the decision-making procedure**, (...).*

*(c) In particular, a governmental decision-making process concerning complex issues such as those in respect of environmental and economic policy must necessarily involve **appropriate investigations and studies** in order to allow the authorities to strike a fair balance between the various conflicting interests at stake. (...).*

*(d) The **public must have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed** (...).*

*(e) The individuals concerned must have an opportunity to protect their interests in the environmental decision-making process, which implies that **they must be able to participate effectively in relevant proceedings and to have their relevant arguments examined**, although the actual design of the process is a matter falling within the State's margin of appreciation (...)*

*540. It is **with these principles in mind** that the Court will proceed by identifying the content of the State's positive obligations under Articles 2 and 8 of the Convention in the context of climate change (...) However, given the special nature of the phenomenon as compared with the isolated sources of environmental harm previously addressed in the Court's case-law, **the general parameters of the positive obligations must be adapted to the specific context of climate change.***

b) The States' positive obligations in the context of climate change

(1) The States' margin of appreciation

*542. Having regard, in particular, to the scientific evidence as regards the manner in which climate change affects Convention rights, and taking into account the scientific evidence regarding the urgency of combating the adverse effects of climate change, the severity of its consequences, including the grave risk of their reaching the point of irreversibility, and the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights (...), **the Court finds it justified to consider that climate protection should carry considerable weight in the weighing-up of any competing considerations**. Other factors militating in the same direction include the global nature of the effects of GHG emissions, as opposed to environmental harm that occurs solely within a State's own borders, **and the States' generally inadequate track record in taking action***

to address the risks of climate change *that have become apparent in the past several decades, as evidenced by the IPCC's finding of "a rapidly closing window of opportunity to secure a liveable and sustainable future for all" (see paragraph 118 above), circumstances which highlight the* ***gravity of the risks arising from non-compliance with the overall global objective*** *(see also paragraph 139 above).*

543. Taking as a starting-point the principle that States must enjoy a certain margin of appreciation in this area, the above considerations entail a distinction between the ***scope of the margin as regards, on the one hand, the State's commitment to the necessity of combating climate change and its adverse effects, and the setting of the requisite aims and objectives in this respect****, and, on the other hand, the* ***choice of means designed to achieve those objectives****. As regards the former aspect, the nature and gravity of the threat and the general consensus as to the stakes involved in* ***ensuring the overarching goal of effective climate protection through overall GHG reduction targets in accordance with the Contracting Parties' accepted commitments to achieve carbon neutrality****, call for a reduced margin of appreciation for the States. As regards the latter aspect, namely their choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources, the States should be accorded a wide margin of appreciation.*

(2) Content of the States' positive obligations in the climate change context

545. Accordingly, the State's obligation under Article 8 is ***to do its part to ensure such protection****. In this context, the* ***State's primary duty*** *is to* ***adopt****, and to* ***effectively apply in practice****, regulations and measures* ***capable of mitigating the existing and potentially irreversible, future effects of climate change****. (..).*

546. ***In line with the international commitments*** *undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC (...),* ***the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights****, notably the right to private and family life and home under Article 8 of the Convention.*

547. Bearing in mind that the positive obligations relating to the setting up of a regulatory framework must be geared to the specific features of the subject matter and the risks involved (...) and that the ***global aims*** *as to the need to limit the rise in global temperature,* ***as set out in the Paris Agreement****, must inform the formulation of domestic policies, it is obvious that* ***the said aims cannot of themselves suffice as a criterion for any assessment of Convention compliance*** *of individual Contracting Parties to the Convention in this area. This is because each individual State* ***is called upon to define its own adequate pathway for reaching carbon neutrality, depending on the sources and levels of emissions and all other relevant factors within its jurisdiction****.*

548. It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the ***substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in***

principle, the next three decades. *In this context, in order for the measures to be effective, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (...).*

549. Moreover, in order for this to be ***genuinely feasible****, and to* ***avoid a disproportionate burden on future generations****,* ***immediate action*** *needs to be taken and* ***adequate intermediate reduction goals must be set for the period leading to net neutrality****. Such measures should, in the first place, be incorporated into a* ***binding regulatory framework*** *at the national level, followed by* ***adequate implementation****. The relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures. Accordingly, and reiterating the position taken above, namely that the margin of appreciation to be afforded to States is reduced as regards the setting of the requisite aims and objectives, whereas in respect of the choice of means to pursue those aims and objectives it remains wide, the Court finds it appropriate to outline the States' positive obligations (...) in this domain as follows.*

550. When assessing whether a State has remained within its margin of appreciation (...), the Court will examine whether the competent domestic authorities, ***be it at the legislative, executive or judicial level****, have had due regard to the need to:*

(a) adopt general measures specifying a ***target timeline for achieving carbon neutrality*** *and the* ***overall remaining carbon budget for the same time frame****, or another equivalent method of quantification of future GHG emissions,* ***in line with the overarching goal for national and/or global climate-change mitigation commitments****;*

(b) set out ***intermediate GHG emissions reduction targets*** *and pathways (by sector or other relevant methodologies) that are deemed* ***capable, in principle, of meeting the overall national GHG reduction goals*** *within the relevant time frames undertaken in national policies;*

(c) provide ***evidence showing whether they have duly complied****, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);*

(d) keep the ***relevant GHG reduction targets updated with due diligence, and based on the best available evidence****; and*

(e) ***act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures****.*

551. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation (...).

552. Furthermore, effective protection (...) requires that the above-noted mitigation measures be ***supplemented by adaptation measures*** *aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection. Such adaptation measures must be put in place and effectively applied in accordance with the best available evidence (...) and consistent with the general structure of the State's positive obligations in this context (...).*

*553. Lastly, (…) the **procedural safeguards** available to those concerned will be especially material in determining whether the respondent State has remained within its margin of appreciation (…).*

*554. (…), the following types of procedural safeguards are to be taken into account as regards the State's decision-making process in the context of climate change: (a) The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change **must be made available to the public**, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed. (b) Procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.*

(3) Switzerland's failure to comply with its positive obligations

*558. At the outset, the Court notes that the currently existing 2011 CO2 Act (in force since 2013) required that by 2020 GHG emissions should be reduced overall **by 20%** compared with 1990 levels (…). However, as pointed out by the applicants, in an assessment dating back to August 2009, **the Swiss Federal Council found (…) that the industrialised countries (such as the respondent State) had to reduce their emissions by 25-40% by 2020 compared to 1990 levels**. (…).*

*559. Moreover, as the Government acknowledged, the relevant domestic assessments found that **even the GHG reduction target for 2020 had been missed**. Indeed, on average over the period between 2013 and 2020, Switzerland reduced its GHG emissions by around 11% compared with 1990 levels (see paragraph 87 above), which indicates the insufficiency of the authorities' past action to take the necessary measures to address climate change.*

*561. (…) In any event, and irrespective of the way in which the legislative process is organised from the domestic constitutional point of view (…), the fact is that after the referendum a legislative lacuna existed for the period after 2020. The State sought to address this lacuna by enacting, on 17 December 2021, a partial revision of the existing 2011 CO2 Act, according to which the reduction target for the years 2021 to 2024 was set at 1.5% per year compared with 1990 levels, on the understanding that from 2022 onwards, a maximum of 25% of this reduction could be achieved by measures implemented abroad (…). **This also left the period after 2024 unregulated and thus incompatible with the requirement of the existence of general measures specifying the respondent State's mitigation measures in line with a net neutrality timeline.***

*562. These lacunae point to a **failure** on the part of the respondent State to fulfil its positive obligation derived from Article 8 **to devise a regulatory framework setting the requisite objectives and goals** (see paragraph 550 (a)-(b) above). In this context, it should be noted that in its latest AR6 Synthesis Report (Climate Change 2023) the **IPCC stressed that the choices and actions implemented in this decade would have impacts now and for thousands of years** (…).*

564. On 30 September 2022, reflecting the commitments in the updated NDC, the Climate Act was enacted (…). This Act – which was confirmed in a referendum only on

18 June 2023 but has not yet come into force – envisages the principle of a net-zero emissions target by 2050 by providing that the GHG emissions should be reduced "as far as possible". It also provides for an intermediate target for 2040 (75% reduction compared with 1990 levels) and for the years 2031 to 2040 (average of at least 64%) and 2041 to 2050 (average of at least 89% compared with 1990 levels). It also set indicative values for the reduction of emissions in the building, transport and industrial sectors for the years 2040 and 2050. 565. In this connection, the Court notes that the ***Climate Act sets out the general objectives and targets but that the concrete measures to achieve those objectives are not set out in the Act*** *but rather remain to be determined by the Federal Council and proposed to Parliament "in good time" (section 11(1) of the Climate Act).* ***Moreover, the adoption of the concrete measures is to be provided under the 2011 CO2 Act (section 11(2) of the Climate Act), which, as already noted in paragraphs 558 to 559 above, in its current form cannot be considered as providing for a sufficient regulatory framework****.*

566. It should also be noted that the new regulation under the Climate Act concerns intermediate targets only for the period after 2031. Given the fact that the 2011 CO2 Act provides for legal regulation of the intermediate targets only up until 2024 (see paragraph 561 above), this means that the period between 2025 and 2030 still remains unregulated pending the enactment of new legislation.

567. In these circumstances, given the pressing urgency of climate change and the current absence of a satisfactory regulatory framework, ***the Court has difficulty accepting that the mere legislative commitment to adopt the concrete measures "in good time", as envisaged in the Climate Act, satisfies the State's duty to provide, and effectively apply in practice, effective protection*** *of individuals within its jurisdiction from the adverse effects of climate change on their life and health (see paragraph 555 above).*

568. While acknowledging the significant progress to be expected from the recently enacted Climate Act, once it has entered into force, the Court must conclude that the introduction of that new legislation is not sufficient to remedy the shortcomings identified in the legal framework applicable so far.

569. The Court further observes that the ***applicant association has provided an estimate of the remaining Swiss carbon budget under the current situation, also taking into account the targets and pathways introduced by the Climate Act*** *(see paragraph 323 above). Referring to the relevant IPCC assessment of the global carbon budget, and the data of the Swiss greenhouse gas inventory, the applicant association provided an estimate according to which, assuming the same per capita burden-sharing for emissions from 2020 onwards, Switzerland would have a remaining carbon budget of 0.44 GtCO2 for a 67% chance of meeting the 1.5°C limit (or 0.33 GtCO2 for an 83% chance). In a scenario with a 34% reduction in CO2 emissions by 2030 and 75% by 2040, Switzerland would have used the remaining budget by around 2034 (or 2030 for an 83% change).* ***Thus, under its current climate strategy, Switzerland allowed for more GHG emissions than even an "equal per capita emissions" quantification approach would entitle it to use****.*

570. The Court observes that the Government relied on the 2012 Policy Brief to justify the absence of any specific carbon budget for Switzerland. Citing the latter, the Government suggested that there was no established methodology to determine a country's carbon budget and acknowledged that Switzerland had not determined one. They argued that Swiss national climate policy could be considered as being similar in

approach to establishing a carbon budget and that it was based on relevant internal assessments prepared in 2020 and expressed in its NDCs (...). However, ***the Court is not convinced that an effective regulatory framework concerning climate change could be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations*** *(see paragraph 550 (a) above).*

571. In this regard ***the Court cannot but note that the IPCC has stressed the importance of carbon budgets and policies for net-zero emissions*** *(see paragraph 116 above),* ***which can hardly be compensated for by reliance on the State's NDCs under the Paris Agreement****, as the Government seemed to suggest. The* ***Court also finds convincing the reasoning of the GFCC, which rejected the argument that it was impossible to determine the national carbon budget, pointing to, inter alia, the principle of common but differentiated responsibilities under the UNFCCC and the Paris Agreement*** *(see Neubauer and Others, cited in paragraph 254 above, paragraphs 215-29).* ***This principle requires the States to act on the basis of equity and in accordance with their own respective capabilities****. Thus, for instance, it is instructive for comparative purposes that the European Climate Law provides for the establishment of indicative GHG budgets (see paragraph 211 above).*

572. In these circumstances, while acknowledging that the measures and methods determining the details of the State's climate policy fall within its wide margin of appreciation, ***in the absence of any domestic measure attempting to quantify the respondent State's remaining carbon budget, the Court has difficulty accepting that the State could be regarded as complying effectively with its regulatory obligation under Article 8 of the Convention*** *(see paragraph 550 above).*

9. Victim status and standing regarding the alleged violation of Art. 6 and 13 ECHR

590. In order to claim to be a "victim" in the context of an alleged violation of Article 6 of the Convention, and to complain of alleged procedural shortcomings under that provision, it is normally sufficient that the applicant was affected as a party to the proceedings brought by him or her before the domestic courts (...).

592. (...), the Government (...) did not challenge the victim status of applicants nos. 2-5 under the procedural provisions (Articles 6 and 13) (...).

593. Having regard to the fact that the issue of victim status under Article 34 is, in any event, a matter that goes to the Court's jurisdiction and which the Court examines of its own motion (...), the issue of the victim status of the applicants under Article 6 § 1 of the Convention will be examined by joining it to the assessment of the applicability of that provision.

594. Article 6 of the Convention does not guarantee a right of access to a court with power to invalidate or override a law enacted by the legislature (...).

10. Applicability of Art. 6 ECHR in the climate change context

608. The above-noted general principles concerning the applicability of Article 6 § 1 also prevail in the present climate-change context, it being understood that ***their application may need to take into account the specificities of climate-change litigation****. In other words, while characteristics of the subject matter do not at present prompt the Court to revise its firmly established case-law on Article 6, they will nonetheless inevitably have implications for the application of that case-law, both in*

regard to the conditions for its applicability and to the assessment of compliance with the requirements flowing from that provision.

609. (...) Article 6 cannot be relied upon to institute an action before a court for the purpose of compelling Parliament to enact legislation. However, where domestic law does provide for individual access to proceedings before a Constitutional Court or another similar superior court which does have the power to examine an appeal lodged directly against a law, Article 6 may be applicable (...)

610. (...) it is important to note that in so far as participation of the public and access to information in matters concerning the environment (as widely acknowledged in international environmental law) constitute rights recognised in domestic law, this may lead to a conclusion that there is a "civil" right within the meaning of Article 6. (...)

612. As regards, lastly, the requirement that the outcome of the proceedings in question must be "directly decisive" for the applicant's right, the Court notes that there is a ***certain link between the requirement*** *under Article 6 that the outcome of the proceedings must be directly decisive for the applicants' rights relied on under domestic law,* ***and the considerations it has found relevant with a view to setting out criteria for victim status as well as those relating to the applicability of Article 8*** *(...).*

613. Furthermore, the object of the proceedings also has a bearing on whether the outcome can be considered decisive for the right relied on. (...). In the context of climate litigation, however, the object of the proceedings may well be broader, which is why the question whether their object can be considered directly decisive for the rights relied on becomes more critical and distinct.

614. At the same time, the various elements of the analysis under this limb of the test, and in particular the notion of imminent harm or danger, cannot be applied without properly taking into account the specific nature of climate change-related risks, including their potential for irreversible consequences and corollary severity of harm. ***Where future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction****. Such an approach* ***would unduly limit access to a court for many of the most serious risks associated with climate change****. This is particularly true for legal actions instituted by associations. In the climate-change context, their legal actions must be seen in the light of their role as a means through which the Convention rights of those affected by climate change, including those at a distinct representational disadvantage, can be defended and through which they can seek to obtain an adequate corrective action for the alleged failures and omissions on the part of the authorities in the field of climate change.*

11. Applicability of Art. 6 ECHR in the present case

615. The Court notes that ***the applicants' action instituted at the domestic level largely concerned requests for legislative and regulatory action falling outside the scope of Article 6 § 1*** *(see points 1-3 and some items under point 4 of their claims in paragraph 22 above).* ***In part, however, the action concerned the implementation of measures within the competence of the respective authorities, required to achieve the current reduction target of 20%****, and thus for*

ending the unlawful omissions (see the opening part of point 4 in paragraph 22 above). ***They also requested a declaratory ruling of unlawfulness of the alleged governmental omissions in the field of climate change*** *(see point 5 of the request). (...)*

616. While the ***complaint concerning policy decisions that are subject to the relevant democratic processes is not a matter falling within the scope of Article 6*** *(see paragraph 594 above), the* ***applicants' complaint concerning effective implementation of the mitigation measures under existing law is a matter capable of falling within the scope of that provision****, provided that the other conditions for the applicability of Article 6 § 1 are satisfied.*

620. Lastly, as regards the third criterion – whether the outcome of the proceedings was "directly decisive" for the applicants' rights – the Court notes the following.

621. As regards the dispute brought by the applicant association, and in so far as that dispute arose out of a relevant part of its claim at the domestic level – namely, the complaint concerning the failure to effectively implement mitigation measures under the existing law (see paragraph 615 above) – the applicant association has demonstrated that it had an actual and sufficiently close connection to the matter complained of and to the individuals seeking protection against the adverse effects of climate change on their lives, health and quality of life. In other words, the applicant association sought to defend the specific civil rights of its members in relation to the adverse effects of climate change (see also paragraphs 521-526 above). It acted as a means through which the rights of those affected by climate change could be defended and through which they could seek to obtain an adequate corrective action for the State's failure to effectively implement mitigation measures under the existing law (see paragraph 614 above).

622. In this connection, the Court refers to its above findings regarding the applicant association's standing for the purposes of the complaint under Article 8 of the Convention (see paragraphs 521-526 above). It reiterates the important role of associations in defending specific causes in the sphere of environmental protection, as already found in its case-law (see paragraph 601 above), as well as the particular relevance of collective action in the context of climate change, the consequences of which are not specifically limited to certain individuals. ***Similarly, in so far as a dispute reflects this collective dimension, the requirement of a "directly decisive" outcome must be taken in the broader sense of seeking to obtain a form of correction of the authorities' actions and omissions affecting the civil rights of its members under national law.***

623. Article 6 § 1 therefore applies to the complaint of the applicant association and it can be considered to have victim status under that provision regarding its complaint of lack of access to a court (see paragraph 593 above). (...)

624. With respect to applicants nos. 2-5, it cannot be considered that the dispute they had brought concerning the failure to effectively implement mitigation measures under the existing law was or could have been directly decisive for their specific rights. For similar reasons as those stated above with respect to Article 8 of the Convention (see paragraphs 527-535 above), ***it cannot be held that applicants nos. 2-5 have made out a case demonstrating that the requested action by the authorities – namely, effectively implementing mitigation measures under the existing national law – alone would have created sufficiently imminent and certain***

***effects on their individual rights in the context of climate change**. It therefore follows that their dispute had a mere tenuous connection with, or remote consequences for, their rights relied upon under national law (...).*

12. Merits regarding Art. 6 ECHR

627. It should also be reiterated that Article 6 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the grounds of being incompatible with the Convention or to equivalent domestic legal norms (...). Furthermore, the Court has also accepted, albeit in another context, that maintaining the separation of powers between the legislature and the judiciary is a legitimate aim as regards limitations on the right of access to a court (...).

629. At the outset, the Court reiterates that the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (...).

*630. In the present case, the applicant association's legal action was rejected, (...) without the merits of its complaints being assessed (...). There was therefore a limitation on the right of access to a court and the Court must assess whether the manner in which the limitation at issue operated in the present case restricted the applicant association's access to a court in such a way or to such an extent that the **very essence of the right was impaired** (...).*

633. In this connection, it should be reiterated that the action which the applicant association instituted at the domestic level could be seen as being hybrid in nature. In its main part, it clearly concerned issues pertaining to the democratic legislative process and falling outside the scope of Article 6 § 1, but it also concerned issues pertaining specifically to alleged failures in the enforcement of the existing domestic law affecting the protection of the rights defended by the applicant association. Some of the claims thus raised issues going to the lawfulness of the impugned governmental actions or omissions, alleging adverse effects on the right to life and the protection of physical integrity, which are enshrined in the domestic law, notably in Article 10 of the Constitution (see paragraphs 615-617 above).

*634. **To the extent that it was seeking to vindicate these rights in the face of the threats posed by the allegedly inadequate and insufficient action by the authorities to implement the relevant measures for the mitigation of climate change already required under the existing national law, this kind of action cannot automatically be seen as an actio popularis or as involving a political issue which the courts should not engage with.** This position is consistent with the reasoning set out in paragraph 436 above as regards the manner in which climate change may affect human rights and the pressing need to address the threats posed by climate change.*

*635. **The Court is not persuaded by the domestic courts' findings that there was still some time to prevent global warming from reaching the critical limit** (see paragraphs 56-59 above). This was **not based on sufficient examination of the scientific evidence concerning climate change**, which was already available at the relevant time, as well as the general acceptance that there is urgency as regards the existing and inevitable future impacts of climate change on various aspects of human rights (see paragraph 436 above; see also paragraph 337 above as regards the respondent Government's acceptance that there was a climate emergency). Indeed,*

the existing evidence and the scientific findings on the urgency of addressing the adverse effects of climate change, including the grave risk of their inevitability and their irreversibility, suggest that there was a ***pressing need to ensure the legal protection of human rights as regards the authorities' allegedly inadequate action to tackle climate change.***

636. The Court further notes that the domestic courts did not address the issue of the standing of the applicant association, an issue which warranted a separate assessment irrespective of the domestic courts' position as regards the individual applicants' complaints. The domestic courts did not engage seriously or at all with the action brought by the applicant association.

637. What is more, before resorting to the courts the applicant association, and its members, had raised their complaints before various expert and specialised administrative bodies and agencies, but none of them dealt with the substance of their complaints (see paragraph 22 above). Despite the fact that such an examination by the administrative authorities alone could not satisfy the requirements of access to a court under Article 6, the Court notes that, judging by the DETEC's decision, the ***rejection of the applicants' complaint by the administrative authorities would seem to have been based on inadequate and insufficient considerations similar to those relied upon by the domestic courts*** *(see paragraphs 28-31 above). The Court notes, furthermore,* ***that individual applicants/members of the association were not given access to a court****, and* ***nor was there any other avenue*** *under domestic law through which they could bring their complaints to a court. (...).*

638. The foregoing considerations are sufficient to enable the Court to conclude that, to the extent that the applicant association's claims fell within the scope of Article 6 § 1, its right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired.

639. In this connection, the Court considers it essential to emphasise the ***key role which domestic courts have played and will play in climate-change litigation****, a fact reflected in the case-law adopted to date in certain Council of Europe member States,* ***highlighting the importance of access to justice in this field****. Furthermore, given the* ***principles of shared responsibility and subsidiarity, it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed****.*

640. In the present case, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

13. Considerations regarding Art. 13 ECHR

644. The Court notes that the role of Article 6 in relation to Article 13 is that of a lex specialis, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (...).

645. As regards applicants nos. 2-5, having regard to its findings in paragraphs 527 to 535 and 625 above, the Court finds that they have no arguable claim under Article 13 (...).

14. Considerations regarding Art. 46 ECHR

657. In the present case, ***having regard to the complexity and the nature of the issues involved, the Court is unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the present judgment****. Given the differentiated margin of appreciation accorded to the State in this area (...), the Court considers that the respondent State, with the assistance of the Committee of Ministers, is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of measures aimed at ensuring that the domestic authorities comply with Convention requirements, as clarified in the present judgment.*