Federal Supreme Court [of Switzerland], Public Law Division I

Judgment 1C_37/2019 of 5 May 2020

Verein KlimaSeniorinnen Schweiz et al. v. Federal Department of the Environment, Transport, Energy and Communications (DETEC)

Ruling on real acts relating to climate protection

Appeal against the judgment of the Federal Administrative Court, Section 1, of 27 November 2018 (A-2992/2017)

Unofficial translation prepared on behalf of *KlimaSeniorinnen*

Explanatory notes

Case history

The association (*Verein*) *KlimaSeniorinnen Schweiz* as well as four individual women filed a request on 25 November 2016 for issuance of a ruling on real acts in terms of Art. 25*a* (1) (a) APA for discontinuation of omissions in climate protection.[1] The request was addressed to four administrative authorities which had been identified as having failed to fulfill their obligations: the Federal Council, as the highest executive body; DETEC, as the department responsible for the protection and preservation of natural resources and protection against natural hazards; and finally two of DETEC's subordinate administrative units, the Federal Office for the Environment (FOEN) and the Swiss Federal Office of Energy (SFOE). DETEC responded to the request on behalf of the other three respondents. In its 25 April 2017

[1] See <http://klimaseniorinnen.ch/wpcontent/uploads/2017/05/request_KlimaSeniorinnen.pdf> for an unofficial English translation of the request.

ruling,[2] DETEC denied standing, alleging the applicants' rights had not been affected as required by Art. 25*a* APA, and did not enter into the case.

In May 2017 the senior women appealed to the Federal Administrative Court. The judgment issued by the Federal Administrative Court on 27 November 2018[3] was in response to that appeal. In it, the Federal Administrative Court did not find fault with DETEC's not entering into the case.

The appellants then submitted an appeal in matters of public law to the Federal Supreme Court on 21 January 2019.[4]

The Federal Supreme Court dismissed the appeal on 5 May 2020 (received on 19 May 2020).

English terminology

The following terminology is used in the present translation:

In the first instance, *KlimaSeniorinnen Schweiz* and the four individual women were the **applicants**; they filed a **request** in which they made demands. DETEC, one of the four **respondents**, issued a **ruling**.

In the second instance, *KlimaSeniorinnen Schweiz* and the four individual women were the **appellants**; they filed an **appeal** with the Federal Administrative Court (the **first appeal proceedings**), which issued a **judgment**. From the perspective of the second instance, DETEC served as the respondent in the first appeal proceedings and as the authority of first instance (it is not called the "lower court" or "court of first instance" since DETEC is not a court).

In the third instance, *KlimaSeniorinnen Schweiz* and the four individual women were the **appellants**; they filed an **appeal in matters of public law** with the Federal Supreme Court (the **second appeal proceedings**), asking for a **decision overturning the judgment of the Federal Administrative Court**. From the perspective of the third instance, the Federal Administrative Court served as the **court of previous instance**. The **respondent in the second**

[2] See <http://klimaseniorinnen.ch/wpcontent/uploads/2017/11/Verfuegung_UVEK_Abschnitt_C_English.pdf> for an unofficial translation of DETEC's reasons.
[3] See https://klimaseniorinnen.ch/wp-content/uploads/2019/02/Judgment-FAC-2018-11-28-KlimaSeniorinnen-English.pdf for an unofficial translation of the judgment.
[4] See <https://klimaseniorinnen.ch/wp-content/uploads/2020/06/Appeal-to-FSC-2019-01-21-KlimaSeniorinnen-English.pdf> for an unofficial translation of the appeal.

appeal proceedings was DETEC. For reasons of readability, we refer simply to DETEC and not to "the department."

The term **Convention law** refers to the European Convention on Human Rights.

In the German version of APA, Art. 48, which concerns standing, reads "*Zur Beschwerde ist berechtigt: ... wer durch die angefochtene Verfügung* ***besonders berührt*** *ist* ..." The official French version uses the terms "*spécialement atteint*," the official Italian version "*particolarmente toccato*." Whereas "*besonders berührt*" is translated as "specifically affected" in the Swiss government's unofficial translation into English,[5] the translators of the present appeal decided to use "**particularly affected**."

[5] https://www.admin.ch/opc/en/classified-compilation/19680294/index.html

Abbreviations

English		**German**	
APA	Administrative Procedure Act	VwVG	Verwaltungsverfahrensgesetz (SR 172.021)
Art.	Article	Art.	Artikel
BBl	Federal Gazette	BBl	Bundesblatt
BGE	(Published) decisions of the Federal Supreme Court of Switzerland	BGE	(Publizierte) Bundesgerichts-entscheidungen
CO_2 Act	Federal Act on the Reduction of CO_2 Emissions	CO_2-Gesetz	Bundesgesetz über die Reduktion der CO_2-Emissionen (SR 641.71)
Const.	Federal Constitution of the Swiss Confederation	BV	Bundesverfassung der Schweizerischen Eidgenossenschaft (SR 101)
DETEC	Federal Department of the Environment, Transport, Energy and Communications	UVEK	Departement für Umwelt, Verkehr, Energie und Kommunikation
E.	Considerations	E.	Erwägungen
ECHR	European Convention on Human Rights	EMRK	Europäische Menschenrechts-konvention
ECtHR	European Court of Human Rights	EGMR	Europäischer Gerichtshof für Menschenrechte

Federal Supreme Court

1C_37/2019

Judgment of 5 May 2020
Public Law Division I

Composition of the court

Judge Chaix (presiding),
Judges Fonjallaz, Kneubühler,
Jametti, Haag,
Court clerk Baur.

Parties

1. ***Verein KlimaSeniorinnen Schweiz***,
P.O. Box 9320, 8036 Zurich,
2. **A. Z.**,
3. **B. Y.**,
4. **C. X.**,
5. **D. W.**,
appellants,
all represented by
Martin Looser, attorney-at-law,
Klausstrasse 43, P.O. Box 3062, 8034 Zurich,
and Cordelia Bähr, attorney-at-law,
Ekkehardstrasse 6, P.O. Box 46, 8042 Zurich,

against

**Federal Department of the Environment,
Transport, Energy and Communications,
General Secretariat,**
Bundeshaus Nord, 3003 Bern.

Object	Ruling on real acts relating to climate protection, appeal against the judgment of the Federal Administrative Court, Section I, of 27 November 2018 (A-2992/2017)

Facts of the case:

A.

In their request of 25 November 2016, the *Verein* [Association] *KlimaSeniorinnen Schweiz* as well as A. Z., B. Y., C. X. and D. W. addressed the Federal Council; the Federal Department of the Environment, Transport, Energy and Communications DETEC; the Federal Office for the Environment FOEN and the Swiss Federal Office of Energy SFOE. They criticized various omissions in the area of climate protection and requested the issuance of a ruling on real acts. They asked the authorities addressed to decide about discontinuing the criticized omissions within their respective areas of responsibility. In addition, they asked them to arrange for all actions required – through 2030 – to ensure that Switzerland make its contribution to the objective of the Paris Climate Agreement of 12 December 2015 (SR 0.814.012; hereinafter: Paris Climate Agreement) to limit global warming to well below 2˚C, or at the very least to the objective of limiting global warming to 2˚C. The applicants described the concrete measures they called for in a non-exhaustive manner in four extensive demands. They requested that the reduction target in terms of Art. 3 (1) of the CO2 Act of 23 December 2011 (SR 641.71) be corrected and that preliminary legislative proceedings be initiated with the goal of incorporating in legislation an emission reduction target in accordance with the Constitution, national legislation and international law. The Federal Council, they said, was to adequately inform the legislature and the public about the necessity of a reduction target of at least 25 % by 2020. They demanded that in order to achieve this goal, the necessary measures to reduce emissions be undertaken, such as promoting electromobility, enacting building standards and introducing a CO2 levy on motor fuels; the agricultural sector must also be included. Moreover, they requested that preliminary legislative proceedings be initiated, and that a reduction target of at least 50 % for the year 2030 compared to 1990 as well as the measures necessary to achieve this be proposed and recommended. Finally, they demanded that the measures and duties to act already stipulated by law today be implemented systematically in order to achieve the reduction target established by law by 2020. The applicants stated that these include, for instance, the obligation for the cantons to prepare annual reports about their measures to reduce CO2 emissions from buildings and to enact building standards; additional measures in the event of failure to achieve the interim building sector target, including raising the CO2 levy on thermal fuels; measures to ensure measurement of the actual CO2 emissions of new vehicles,

measures to reduce the CO2 emissions of vehicles in the event of failure to achieve the interim target in the transport sector, such as promoting electromobility and increasing the compensation rate for CO2 emissions from motor fuels. The effectiveness of the measures, they demanded, was to be assessed. If necessary, they argued, DETEC must propose additional effective measures to the Federal Council. They demanded that, in the event that it is no longer possible to remedy the unlawful situation, the unlawfulness of the omissions on the part of the authorities be confirmed in a declaratory ruling. In its ruling of 25 April 2017, DETEC, on behalf of all the authorities addressed, did not enter into the request.

B.

The appellants appealed this decision to the Federal Administrative Court, which dismissed their appeal in its judgment of 27 November 2018.

C.

In an appeal in matters of public law to the Federal Supreme Court dated 21 January 2019, the appellants requested that the decision of the Federal Administrative Court be overturned and the case be referred back to DETEC for a substantive assessment and possibly to the Federal Administrative Court for a reassessment.

DETEC and the Federal Administrative Court forwent a consultation. The appellants submitted additional documents, but otherwise did not make any further comments.

Considerations:

1.

The appeal is against a final decision of the Federal Administrative Court in a matter of public law. Such decisions are open to appeal in matters of public law (cf. Art. 82 (a), Art. 86 (1) (a) and Art. 90 FSCA); there are no grounds for exclusion in terms of Art. 83 FSCA. Appellants 2-5 took part in the proceedings before the previous instances, are particularly affected by the judgment under appeal and have an interest worthy of protection in it being overturned. They are therefore entitled to appeal in terms of Art. 89 (1) FSCA. There is nothing else to prevent their appeal, which was lodged in due time and form, from being entered into. Whether appellant 1 is entitled to file an appeal in terms of the rules on the appeal brought by an association in its own name but in the interests of its members (*egoistische Verbandsbeschwerde*) because a large number of its members is 75 years old or older – as the appellants argue – can thus be left open (cf. judgment 1C_154/2014 of 21 November 2014 E. 1.3). Accordingly, the following considerations are limited to appellants 2-5 (hereinafter: appellants). However, they also apply to the members of appellant 1 who are 75 years or older.

2.

An appeal in matters of public law can be directed in particular against violations of federal and international law (Art. 95 (a) and (b) FSCA). The Federal Supreme Court applies this law *ex officio* (Art. 106 (1) FSCA), but as a matter of principle, it examines the decisions appealed to it only for legal infringements which the person lodging the appeal states and for which they give reasons (cf. Art. 42 (2) FSCA). More stringent requirements regarding the statement of reasons apply where violations of fundamental rights are alleged (Art. 106 (2) FSCA). The Federal Supreme Court also bases its judgment on the facts of the case established by the court of previous instance (Art. 105 (1) FSCA) unless they are clearly incorrect, i.e. arbitrary, or based on a violation of law in terms of Art. 95 FSCA (Art. 97 (1) and Art. 105 (2) FSCA). Such a complaint must be substantiated (Art. 42 (2) FSCA in conjunction with Art. 106 (2) FSCA).

3.

3.1 The subject of the present appeal proceedings is first of all the question whether the decision of the court of previous instance violates Art. 25*a* APA, Art. 6 (1) ECHR or Art. 13 ECHR. The appellants' arguments in this respect must be dealt with – to the extent necessary – in the substantive assessment of the appeal (see E. 5-7 below). The appellants' criticisms that the previous instance incorrectly denied that DETEC had violated their right to be heard and that it had itself also violated their right to be heard in terms of Art. 29 (2) Const. and Art. 6 (1) ECHR, must be examined first.

3.2 In the judgment under appeal, the court of previous instance stated that in comparison with the appellants' submissions, DETEC's statement of reasons was brief and general. However, it contained the essential considerations by which DETEC had been guided, and the appellants had been in a position to challenge the ruling in a proper manner. There was, the court continued, no violation of the duty to state reasons and thus of the appellants' right to be heard.

This assessment is unobjectionable. In its decision, an authority does not have to deal with all the party's points of view in a detailed manner and expressly refute every single pleading. Rather, it can limit itself to the points that are essential for the decision. The reasons must be written in such a way that the person affected can comprehend the full range of the implications of the judgment and, in full knowledge of the matter, can appeal it to the higher instance (for more information: BGE 143 III 65 E. 5.2 pp. 70 et seq. with references). These requirements are met by DETEC's statement of reasons, which is why the court of previous instance was right to deny that there had been any breach of the duty to state reasons and of the right to be heard. It cannot be seen either how DETEC's ruling would have precluded rational decision-making due to its brevity and would thus have defeated the purpose of self-monitoring. Nor can the appellants derive anything in their favor from Art. 6 (1) ECHR – irrespective of the question as to the extent to which this provision applies in the present case – (cf. judgment of the ECtHR *Dulaurans v. France* of 21 March 2000, §§ 33 et seq. MEYER-LADEWIG, HARRENDORF AND KÖNIG, in EMRK, Handkommentar, 4th ed. 2017 [hereinafter Handkommentar EMRK], Art. 6 N. 105), particularly as this provision does not contain any further-reaching rights with regard to the obligation of the authorities to state grounds than Art. 29 (2) Const.

3.3 The appellants criticize that the grounds stated by the court of previous instance are also insufficient and thus violate the right to be heard. The court of previous instance had indeed made extensive general and abstract statements on Art. 25*a* APA as well as Art. 6 (1) and Art. 13 ECHR, they claim. However, they assert, it had not dealt with the factual and legal circumstances decisive in the present case – which they had set out in detail – and had largely refrained from conducting a subsumption under these provisions, taking these circumstances into account.

In the judgment under appeal, the court of previous instance explained the requirements of Art. 25*a* APA and Art. 6 (1) ECHR extensively and in a general manner, but specifically examined only some of them. In addition, it did not deal, or did not deal in detail, in particular with the central arguments of the appellants on the specific effects of climate change on the group of women aged 75 and over and the (allegedly) existing state obligations to protect this group on the basis of fundamental and human rights, nor did it deal with the significance of these asserted factual and legal circumstances for the application of Art. 25*a* APA and Art. 6 (1) ECHR. However, its statement of reasons explains why it considered that the requirements for the application of these two provisions it had actually examined had not been fulfilled. It is also clear why it did not consider Art. 13 ECHR to be applicable. Thus the court of previous instance stated the main reasons for its judgment, and the grounds it stated enabled the appellants to comprehend the full range of the implications of the judgment and to challenge it before the Federal Supreme Court in full knowledge of the facts. Accordingly, the court of previous instance did not violate its duty to state reasons and the appellants' right to be heard.

4.

4.1 In terms of Art. 25*a* APA, anyone with an interest worthy of protection may demand that the authority responsible for actions based on public law of the Federation and affecting rights or obligations refrain from, cease or revoke unlawful actions, eliminate the consequences of unlawful actions, or establish the unlawfulness of actions (Art. 25*a* (1) APA). The authority shall decide by issuing a ruling (Art. 25*a* (2) APA). Above and beyond the wording of the law, it is also possible to criticize omissions committed by authorities and in particular demand the performance of actions. However, failure of the state to act can only be unlawful if there is a specific obligation of the authorities to act (BGE 144 II 233 E. 4.1 p. 236; 140 II 315 E. 2.1

p. 320 with references). There is no entitlement to a ruling in terms of Art. 25*a* APA if the legislation has deliberately excluded legal protection against the real act; likewise, there is no such entitlement if sufficient legal protection is possible by other means (BGE 140 II 315 E. 3.1 p. 322; Judgment 2C_601/2018 of 15 June 2018 E. 6, not published in BGE 144 II 233). When examining legal protection based on Art. 25*a* APA, one must also differentiate it from *actio popularis* and a complaint to a supervisory authority (Art. 71 APA); this necessitates a careful examination of whether the person is affected in a different way from the general public (BGE 144 II 233 E. 8.4 p.245; 140 II 315 E. 4.7 p. 329). It is essential that an applicant's *own* rights are affected (E. 4.4 below). This requires a minimum intensity of the impairment, whereby the threshold must not be set too high, but also not so low that it could lead to a flood of appeals (MARKUS MÜLLER, Rechtsschutz gegen Verwaltungsrealakte, in Tschannen [ed.], Neue Bundesrechtspflege, 2008 [hereinafter: Rechtsschutz], p. 313 et seq., p. 354). The boundary to inadmissible *actio popularis* must be determined separately for each area of the law; a practical and reasonable distinction is required which takes into account the need for legal relief and the further options for legal protection (BGE 143 I 336 E. 4.1 p. 339; cf. also judgment 2C_959/2014 of 24 April 2015 E. 3.1 with further references to case law).

4.2 In Art. 25*a* APA, "actions" refers to real acts. These differ from legal acts in that they are aimed at directly shaping the facts and not the legal situation (BGE 144 II 233 E. 4.1 p. 235 et seq. with references). Like legal acts, real acts can basically be divided into the categories individual-concrete (e.g. the police actions of stopping and using firearms) and general-abstract (e.g. certain warnings and recommendations). Whether the term "actions" used in Art. 25*a* APA also includes real acts in the latter sense cannot be deduced from the materials developed in preparation of the APA. According to the case law of the Federal Supreme Court and in accordance with the doctrine, the term is to be understood broadly as a matter of principle. Legal protection is to be restricted by applying the other criteria, in particular the criteria of being affected in rights and obligations and the interest worthy of protection (for more information: BGE 144 II 233 E. 4.4 p. 237 with references).

4.3 Even if a broad concept of state acts (or failures to act) in terms of Art. 25*a* APA is to be assumed as a matter of principle, the question may arise as to whether this procedural provision can be understood as a guarantee granted to citizens by way of legislation that they may require a series of state measures on a specific issue. In the present request to the Federal Council and

parts of the Federal Administration, the appellants demand a large number of measures of various nature and scope which essentially have the character of preparatory work for legal provisions at the level of laws or ordinances.

According to Swiss constitutional law, proposals for shaping current policy areas can in principle be submitted by way of democratic participation. To this end, political rights, which also include the election of the Parliament, are available in terms of Art. 34 and 136 Const. These include in particular the right to take a popular initiative for a total or partial revision of the Federal Constitution (Art. 138 et seq. Const.). In addition, the right of petition in terms of Art. 33 Const. provides the opportunity to approach the authorities and be noticed by them with practically no formality and without disadvantage (PIERRE TSCHANNEN, in Basler Kommentar BV, 2015, Art. 33 N. 3). Reference should also be made to the right of Council members, parliamentary groups, parliamentary committees and cantons to submit initiatives and motions in terms of Art. 160 (1) Const., as well as the right of Council members and the Federal Council to submit motions on a matter under discussion (Art. 160 (2) Const.). Finally, in order to protect their interests, the appellants may also rely on fundamental rights, in particular freedom of expression and of information (Art. 16 Const.), freedom of the media (Art. 17 Const.) and freedom of assembly and association (Art. 22 and 23 Const.).

In view of the considerations set out below and the outcome of the present proceedings, it is not necessary to go into the aspects mentioned here in more detail.

4.4 Art. 25*a* APA defines the interest in legal protection specific to the dispute using an act-related and a subject-related criterion. For one thing, the real act must "affect rights or obligations," for another, the applicant must have an "interest worthy of protection" in a ruling on real acts. Although the above-mentioned criteria have the same thrust as the determination of the interest in legal protection, they are clearly separated within Art. 25*a* APA (for more information: BGE 144 II 233 E. 7.1 p. 238; 140 II 315 E. 4.1 p. 324).

According to the prevailing opinion, the requirement of being affected in one's rights and obligations presupposes an interference with the personal legal sphere of the person affected

(cf. BGE 144 II 233 E. 7.3.1 p. 238; 140 II 315 E. 4.3 p. 325 and E. 4.5 p. 326 et seq.; each with references). Legal positions worthy of protection in this sense are derived primarily from fundamental rights; however, legally protected interests from other legal titles must also be taken into account (BGE 144 II 233 E. 7.3.1 p. 238; 140 II 315 E. 4.3 p. 325). An actual interference with fundamental rights is not required. It is sufficient for the applicant to demonstrate that a reflex triggered by a real act is relevant in terms of fundamental rights and *could* therefore take on the intensity of an interference (cf. BGE 140 II 315 E. 4.8 p. 329 et seq.; MÜLLER, Rechtsschutz, loc. cit., p. 354; similarly ISABELLE HÄNER, in Praxiskommentar Verwaltungsverfahrensgesetz, Waldmann/Weissenberger [eds.], 2nd ed. 2016, Art. 25*a* N. 28). This requires a certain intensity of the private party being affected, "*un certain degré de gravité*" (cf. MÜLLER, Rechtsschutz, loc. cit., p. 354; MOOR AND POLTIER, Droit administratif, Vol. II, Les actes administratifs et leur contrôle, 3rd ed. 2011, p. 44; BGE 133 I 49 E. 3.2 p. 57). Whether the interference is sufficient to assume that the person is affected depends on the scope of the fundamental right (HÄNER, loc. cit., Art. 25*a* N. 28). The real act in question must also have the potential to interfere with that fundamental right (cf. BGE 144 II 233 E. 7.3.2 p. 239 with references).

5.

5.1 The appellants argue that climate change is expected to lead to significant changes in summer temperatures and precipitation as well as to more frequent, intense and prolonged periods of heat and heat waves. According to scientific studies, they argue, women aged 75 years and over have a significantly increased risk of mortality in hot summers and are significantly more severely affected in terms of their health than the general public; in addition, their well-being is adversely affected to a greater degree. These women are therefore a population group particularly affected by and particularly vulnerable to the consequences of global warming. This was already the case today, as climate change had already begun, particularly with regard to heat waves.

Under these circumstances, they argue, the right to life in terms of Art. 10 (1) Const. and Art. 2 ECHR and the right to respect for private and family life in terms of Art. 8 ECHR would in any event give rise to state obligations to protect women aged 75 and over. At the very least, it was to be ensured that Switzerland make its contribution toward the goal agreed in the Paris

Climate Agreement of keeping the increase in the global average temperature well below 2˚C above pre-industrial levels. DETEC and the authorities represented by it in the present proceedings were therefore obliged to take all necessary actions within their respective competences to reach this target. Until 2030, they were to take particularly those measures listed in demands 1-4 of their request for the issuance of a ruling on real acts (see above, Facts of the case, A). Because DETEC and the other authorities had failed to do so, even though the climate protection measures taken to date were insufficient, their rights, as women over the age of 75 (the appellants are 87, 81, 77 and 76 years old), had been and would continue to be violated. The requirement that their rights be affected in terms of Art. 25*a* APA was thus also fulfilled.

5.2 The fact that the above-mentioned authorities have not taken the actions demanded by the appellants, even though, as the appellants claim, the group of women aged 75 and over is already particularly affected by the consequences of climate change today and would be to an even greater degree if the above-mentioned target of the Paris Climate Agreement were missed, does not in itself mean that the rights invoked by the appellants would be violated. Nor does it follow from the alleged omission alone that the appellants' (fundamental) rights in terms of Art. 25*a* APA would be affected with the necessary intensity (cf. E. 4 above).

5.3 In this context, it must be noted that the limit of "well below 2˚C" in terms of the Paris Climate Agreement (cf. Art. 2 (1) (a) of the Agreement) is not expected to be exceeded in the near future. The Intergovernmental Panel on Climate Change (IPCC) concludes in its Special Report "1.5˚C global warming" from 2018 (cf. IPCC, Global Warming of 1.5 °C, 2018, hereinafter: IPCC Special Report, < http://www.ipcc.ch/sr15 >) that global warming will reach 1.5˚C around the year 2040 (likely range 2030 to 2052), provided that it continues at the current rate, i.e. 0.2˚C per decade (likely range 0.1 to 0.3˚C per decade) (cf. IPCC Special Report, Summary for Policymakers, A.1, A.1.1 p. 4, graph SPM.1 p. 6; Chapter 1, FAQ 1.2 p. 81). The limit of "well below 2˚C" would accordingly be reached at a later time. This also depends on where the vaguely formulated threshold is set. The Paris Climate Agreement and the international climate protection regime based on it also assume that the limit of "well below 2˚C" will not be exceeded in the near future. It is assumed that there is still some time available to prevent global warming exceeding this limit (cf. in particular Art. 3 and 4 [Paris] Climate

Agreement). The planned implementation of the Paris Climate Agreement into Swiss law (cf. in particular Botschaft zur Totalrevision des CO_2-Gesetzes nach 2020, BBl 2018 247 et seq.; also the decision of the Federal Council of 28 August 2019 [net zero emissions by the year 2050 as a target for the period after 2030]) is also based on this assumption. In their request to the above-mentioned authorities for issuance of a ruling on real acts, the appellants also anticipate a corresponding period.

5.4 According to the above-mentioned scientific findings, global warming can be slowed down through suitable measures. This is urgently required to protect life on Earth, even if the limit of "well below 2˚C" – which the appellants addressed – will only occur in the medium to more distant future (cf. IPCC Special Report, according to which [even] global warming of more than 1.5˚C could in principle still be prevented [in particular Summary for Policymakers, C. p. 12 et seq.). This finding also underlies the Paris Climate Agreement. Its implementation is the subject of international and national consultations and decisions by the Parties, including Switzerland. The implementation measures pursue the objective, which the appellants also demand, that the consequences of any global warming exceeding the limit of "well below 2˚C" shall only occur in the medium to more distant future.

Under the circumstances mentioned above, the appellants' right to life in terms of Art. 10 (1) Const. and Art. 2 ECHR does not appear to be threatened by the alleged omissions to such an extent at the present time that one could speak of their own rights being affected in terms of Art. 25*a* APA in a sufficient intensity (see E. 4. above). The same applies to their private and family life and their home in terms of Art. 8 ECHR and Art. 13(1) Const. The alleged domestic omissions are not sufficiently relevant regarding individual fundamental rights. Therefore, Art 25*a* APA, which ensures the protection of individual rights, does not apply. The appellants are not sufficiently affected with regard to their right to life in terms of Art. 10 (1) Const. and Art. 2 ECHR (cf. on this object of protection AXEL TSCHENTSCHER, in Basler Kommentar Bundesverfassung, 2015, Art. 10 N. 9 et seq.; MÜLLER AND SCHEFER, Grundrechte in der Schweiz, 4th ed. 2008, p. 53; judgment of the ECtHR *Kolyadenko and Others v. Russia* of 28 February 2012 §§ 151 et seq. with references). Nor is their right to respect for private and family life in terms of Art. 8 ECHR and Art. 13 (1) Const. affected with the intensity required for an appeal based on Art. 25*a* APA (cf. on these objects of protection

MEYER-LADEWIG AND NETTESHEIM, Handkommentar EMRK, Art. 8 N. 7 et seq., N. 54 et seq. and N. 89 et seq.; KÄLIN AND KÜNZLI, Universeller Menschenrechtsschutz, 4th ed. 2018, margin number 12.45 et seq.; judgment 1C_437/2007 of 3 March 2009 E. 2.6 with references; judgments of the ECtHR *Di Sarno and Others v. Italy* of 10 January 2012 §§ 80 et seq.; *Hardy and Maile v. United Kingdom* of 14 February 2012 § 187 et seq.; each with references). Nor do the appellants appear to be victims of a violation of the aforementioned Convention rights in terms of Art. 34 ECHR (cf. MEYER-LADEWIG AND KULICK, in Handkommentar EMRK, Art. 34 N. 26-28; judgment of the ECtHR *Ouardiri v. Switzerland* of 28 June 2011 § 1 with references). They are not affected in the rights mentioned above and not victims in terms of Art. 34 ECHR because they are not affected in these rights with sufficient intensity. This is not altered by the fact that – as they argue – in certain cases potential victims can be victims in terms of Art. 34 ECHR, too. This too requires a certain intensity of being affected (cf. the citations above), which is not achieved here.

5.5 In view of what has been said above, it follows that the appellants – like the rest of the population – are not affected by the alleged omissions with sufficient intensity in the rights invoked in terms of Art. 25*a* APA. Accordingly, their request to the above-mentioned authorities for issuance of a ruling on real acts does not serve to ensure their individual legal protection. Rather, it aims to have the climate protection measures at the federal level existing today and planned up to the year 2030 examined in the abstract for their compatibility with state obligations to protect. Indirectly – through the requested action of state authorities – it aims to initiate the tightening of these measures. Such a procedure or *actio popularis* is inadmissible in terms of Art. 25*a* APA, which guarantees the protection of individual rights only. Art. 9 (3) Aarhus Convention of 25 June 1998 (SR 0.814.07), to which the appellants referred, cannot change this finding (cf. BGE 141 II 233 E. 4.3.3 [on the right of associations to lodge appeals]; EPINEY, DIEZIG, PIRKER AND REITEMEYER, Aarhus-Konvention, Handkommentar, 1st ed. 2018, Art. 9 N. 35 et seq.; DANIELA THURNHERR, Die Aarhus-Konvention in der Rechtsprechung des Bundesgerichts und des Bundesverwaltungsgerichts, Umweltrecht in der Praxis 2017, p. 524). Such matters are to be advanced not by legal action, but by political means, for which purpose the Swiss system with its democratic instruments opens up sufficient opportunities (E. 4.3 above). Therefore, the fact that the court of previous instance upheld DETEC's decision not to enter into the case with regard to Art. 25*a* APA is not objectionable in the outcome.

6.

6.1 The appellants base their claim for substantive assessment of their request for issuance of a ruling on real acts not only on Art. 25*a* APA, but also on Art. 6 (1) ECHR. According to this, in disputes concerning a person's civil rights and obligations or any criminal charge brought against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. This provision presupposes a civil right derived from domestic law. According to case law, the term "civil rights" refers not only to civil law claims in the narrower sense, but also concerns administrative acts of public bodies in the exercise of governmental authority, provided that these decisively interfere with rights and obligations of a private-law nature. There must be a dispute concerning the existence, content, scope or manner of exercising of such civil rights or obligations. This requires a dispute of genuine and serious nature and whose outcome is directly decisive for the civil rights; effects that are only distant are not sufficient (for more information: BGE 134 I 140 E. 5.2 p. 147; 130 I 388 E. 5.1 p. 394 et seq., E. 5.3 p. 397; each with references). The legal opinion that the disputed claim exists in domestic law must at least be "arguable" (BGE 144 I 340 E. 3.3.2 p. 346; 132 I 229 E. 6.2 p. 238; 127 I 115 E. 5b pp. 120 et seq.; judgments of the ECtHR *Mennitto v. Italy* of 5 October 2000 § 23; *Micallef v. Malta* of 15 October 2009 § 74).

6.2 In any event, the latter condition is not met in the present case. In terms of domestic law, the appellants base their alleged subjective right to have the criticized omissions ended and to have the demanded actions performed on the right to life in terms of Art. 10 (1) Const. However, as stated above, the alleged omissions do not affect them in a legally relevant way in this fundamental right. Therefore, they cannot derive the demands mentioned from this right. Accordingly, they have no subjective right to the declaratory ruling requested in the alternative, namely that the alleged omissions are contrary to (fundamental) rights, either. The court of previous instance therefore rightly confirmed DETEC's decision not to enter into the case in this respect too. It is therefore not necessary to go into the further requirements of Art. 6 (1) ECHR and the statements made in this regard by the appellants and the court of previous instance.

7.

Finally, the appellants invoke Art. 13 ECHR. According to this provision, everyone whose rights or freedoms as set out in the ECHR are violated shall have an effective remedy before a national authority, including cases in which the violation was committed by persons acting in an official capacity. The assertion of the violation must be "arguable" in this case too (BGE 144 I 340 E. 3.4.2 p. 351; 129 II 193 E. 3.2 p. 200; judgments of the ECtHR *Leander v. Sweden* of 26 March 1987 § 77; *Wille v. Liechtenstein* of 28 October 1999 § 75 with references). In any event, this requirement is lacking once more in the present case. As explained, the appellants are not affected in a legally relevant way by the alleged omissions, neither in their right to life in terms of Art. 2 ECHR nor in their right to respect for private and family life in terms of Art. 8 ECHR. They are therefore not violated in these rights, either. Thus, in the outcome, the court of previous instance rightly upheld DETEC's decision not to enter into the case in this respect as well.The further submissions of the appellants and of the court of previous instance in this connection are not to be examined.

8.

It is clear from the considerations above that the appellants cannot use the means of individual legal protection invoked to defend themselves against the alleged omissions of the above-mentioned authorities in the field of climate protection. Therefore, even though their concern is readily comprehensible given the possible consequences of insufficient implementation of the Paris Climate Agreement for older women which they highlighted, their appeal must be rejected.

Given this outcome of the proceedings, the appellants are liable for costs (Art. 66 (1) and (5) FSCA). No party compensation is to be paid for the proceedings before the Federal Supreme Court (Art. 68 (3) FSCA).

Accordingly, the Federal Court finds the following:

1.

The appeal is dismissed.

2.

The appellants are ordered to pay the court costs of Fr. 4,000.00 under joint and several liability.

3.

This judgment will be notified in writing to the appellants; the Federal Department of the Environment, Transport, Energy and Communications, General Secretariat; and the Federal Administrative Court, Section I.

Lausanne, 5 May 2020

On behalf of Public Law Division I
of the Swiss Federal Supreme Court

The presiding judge:		The court clerk:
[signature Chaix]		[signature Baur]
Chaix	[seal, Federal Supreme Court]	Baur