

Einschreiben

The Registrar
European Court of Human Rights
Council of Europe
F-67074 Strasbourg Cedex
France

Zürich, 26 November 2020

New application: Klimaseniorinnen, [REDACTED] v Switzerland and request under Rule 41 (priority)

Dear Registrar

Please find enclosed our clients' application form, supporting document and appendixes. The application concerns the KlimaSeniorinnen Schweiz, an association of more than 1,800 senior women, as well as four women between the ages of 78 and 89 years (Applicants), whose rights to life and private and family life are directly and already affected by climate-induced heatwaves, due to Switzerland's failures in reducing greenhouse gases. The application is brought after having exhausted national remedies, with the latest decision from the Supreme Federal Court denying our clients' appeal in May 2020 and within the deadline extended by the Court during COVID-19.

Under Rule 41 of the Rules of Court, we request that the Court expedite this application as its contents reflect Categories I, II, and III of the Court's Priority Policy. We pray that the Court does this in recognition of the extreme urgency of this application and the profound threats to the physical integrity and dignity of the Applicants. Climate change is perhaps the most pressing emergency faced by humanity. Still, it poses particularly serious and urgent risks to the Applicants, who – as older women – are significantly affected by intense and frequent heatwaves. We further request that the Court expedite this application as it raises an important question of general interest that could have major implications for domestic legal systems and the European system. Despite the Court's extensive jurisprudence addressing violations of the Convention stemming from adverse environmental factors, the Court has yet to address the specific and unprecedented human rights violations originating from climate impacts. As cases addressing climate impacts and concomitant violations of rights increase, domestic European courts could greatly benefit from this Court deciding such a case.

For the application for priority under Rule 41, paras 4-5 and 16 of the application are the most pertinent.

Yours faithfully,

A handwritten signature in blue ink, consisting of a large, stylized initial 'C' followed by a long horizontal line.

Cordelia Bähr
lic. iur., LL.M. Public Law (LSE), Rechtsanwältin

A handwritten signature in blue ink, consisting of a large, stylized initial 'M' followed by several loops and a final flourish.

Martin Looser
Rechtsanwalt

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the “Notes for filling in the application form”.

E. Statement of the facts

58. INTRODUCTION

1. The average annual temperature in Switzerland has increased around 2.1°C since measurements began in 1864 and will continue to raise. From 1961 onwards, in Switzerland, the temperature increase is three times as fast as the trend over the entire measuring period. The summers of 2003, 2015, 2018 and 2019 were the four warmest summers recorded in Switzerland ever, each accompanied by intense heatwaves and many additional heat-related deaths, especially in older women. This application concerns violations of the human rights of an association of older women (KlimaSeniorinnen, Applicant 1), and four individual women (Applicants 2–5, together ‘Applicants’). Their rights to life and private and family life (Articles 2 and 8 under the European Convention on Human Rights ‘ECHR’) are affected directly by climate change-induced heatwaves, and they face serious, foreseeable risks of increased impacts. The Applicants 2–5 are already experiencing severe impacts on their health, well-being and dignity. The further increase of heat-related mortality and morbidity risk is strongly dependent on the scale and rate of the reduction of greenhouse gas emissions (‘GHGs’). Still, Respondent has failed and is failing to put in place all necessary measures required to protect the Applicants. Respondent failed to do its share to prevent a dangerous global temperature increase and to establish a corresponding legislative and administrative framework in line with international climate law and best available science. These failures have occurred, even though Respondent knows about the impacts of climate change on the Applicants and the necessity to act now to reduce GHGs in line with its obligations under international treaties and best available science. Therefore, Respondent has violated its positive obligation to protect the Applicants from climate change-induced heatwaves under the Swiss Constitution (Cst., see Art. 10 Cst.) as well as under Art. 2 and 8 of the ECHR. Furthermore, Applicants have been denied the protection owed to them by the Respondents’ government and courts under Art. 6 and 13 of the ECHR. The Applicants submit that Respondent has violated their rights guaranteed under Art. 2 and 8 and 6 and 13 of the ECHR. It is to note that Sections E and F of this application form are, in principle, a summary of the Additional Submission (‘AS’). The numbering of the accompanying documents follows the order of the AS. Within the AS, the documents are numbered according to the order in the text and then according to the order in the footnotes. The abbreviations are introduced within the application.

HEATWAVES CAUSE DEATHS AND ILLNESSES TO OLDER WOMEN INCLUDING THE APPLICANTS (AS Section 1.1)

2. Recent summers in Switzerland have been the warmest ever recorded, resulting in climate change-induced excess mortality and temperature-related morbidity. According to the Intergovernmental Panel on Climate Change (‘IPCC’), it is “likely” that the increased mortality during heatwaves is attributable to human-induced global warming (Bundle, p. 716). Recent studies provide further scientific proof that climate change-induced heatwaves are causing adverse health effects (p. 723) (AS para. 1). Respondent has reported the additional heat-related morbidity and mortality in recent summers (AS paras. 2-3).

3. The Applicants are part of a vulnerable group due to their age and gender. Heat-related deaths occur much more frequently in older persons, especially in older women such as the Applicants, as stated by Respondent and by the IPCC science. As older women aged above 75, the Applicants are at greater risk of premature loss of life and severe impairment of life and family and private life due to climate change-induced excessive heat than the general population (AS paras. 4-5).

THE APPLICANTS ARE DIRECTLY AFFECTED BY CLIMATE CHANGE-INDUCED HEATWAVES (AS Section 1.2)

4. Applicant 1 is a group of older women, who are, due to their age and gender, at a significantly higher risk to die prematurely or to suffer from life-threatening illnesses due to climate change-induced heatwaves. The average age of the members of Applicant 1 is currently 73-years. 650 members are 75 years old or older (doc. 3). Applicants 2–5 have already suffered and continue to suffer from heat-related illnesses and restrictions in their well-being. Applicant 2 is 89 and wears a pacemaker. Applicant 3 is 83 and has a cardiovascular illness. During hot summers, she cannot leave her residence and is cut off from the outside world. Applicant 4 is 79. Her mobility is restricted during heatwaves as excessive heat exacerbates her acute asthma and chronic obstructive pulmonary disease. Applicant 5 is 78 and suffers from asthma. They describe in personal statements attached to this application (doc. 4-7) how their health and private and family life are affected by heatwaves. Among these adverse effects are health problems as described and confirmed in medical certificates (doc. 8-13), losing consciousness as a result of a heatwave in the summer, being confined at home and cut off from the outside

Statement of the facts (continued)

59.

world. They closely follow weather forecast and organise their life around it. They often stay at home with blinded windows. This deprived them daylight and fresh air. They resign from outside activities. All of this results in increase loneliness, sadness and anxiety. Further details are provided in additional pages (paras. 6-12) and personal statements. And above all, the heatwaves increased their risk of premature death.

5. The Applicants' lives and health have been, currently are and will be threatened by periods of extreme heat that recur every few years. These periods are expected to increase in frequency and intensity (p. 698 f.). Respondent states that conditions experienced during hot summers are "likely to become the norm" due to climate change (p. 697) (AS para. 13). The Applicants are affected by the adverse effect of dangerous climate change-induced heatwaves which attain a minimum level required under Art. 8 of the ECHR. Taking into account the age of the Applicants, consequences to their health, life adaptation they had to undertake to survive summers and heatwaves, there can be no doubt that the climate change-induced heatwaves adversely affect their private and family life to the level that an issue arises under Art. 8 of the ECHR (Hatton § 96).

THE APPLICANTS' VICTIM STATUS (AS section 2)

6. The Applicants have victim status in respect of Art. 2 and 8 ECHR. Under Art 34 ECHR, Applicants 2-5 are direct victims of Respondent's omissions, as they have suffered and continue to suffer personally from heat-related afflictions. Also, with every heatwave, they are and continue to be at a real and serious risk of mortality and morbidity that is higher than the general population, a risk that is even higher for Applicants 4-5 due to their respiratory diseases. Applicants 2-5 are also potential victims of Respondent's failures since they are at an increased risk of heat-related mortality and morbidity due to the lack of adequate reduction of GHG emissions (AS paras. 33-34). Applicant 1 is a direct victim under Art. 34 ECHR. The association's purpose is to prevent health hazards caused by dangerous climate change (doc. 2). It is therefore directly affected by Respondent's omissions to limit GHG emissions to a safe level, in line with the Paris Agreement and best available science. Respondent's omissions prevent Applicant 1 from furthering one of its main objectives. Also, Applicant 1 enables a particularly vulnerable group to exercise its rights in the long term, regardless of the natural age-related retirement of some of its members. For many of its members, Applicant 1 is the only viable way to defend their rights effectively. Further, Applicant 1 is a direct victim as it defends the interests of its members, as part of a defined most vulnerable group. It is thus directly concerned by these proceedings, and itself and its members should not be deprived of the protection of Art. 2 and 8 ECHR by the mere fact that Applicant 1 is a legal person (AS paras. 35-37).

7. There is sufficient close connection between Respondent's omissions in climate protection and the risk of heat-related mortality and morbidity in the past, present and future. This is not altered by the fact that Switzerland is a small state. The Applicants must not be denied victim status simply because a general public interest co-exists with their particular interests. Inherently, climate change measures can never benefit certain population groups exclusively. If Applicants, as members of a most vulnerable group, were denied victim status, it would be questionable who would be entitled to this status in the face of this environmental emergency with serious impacts on human rights. A wide range of institutions has recognised the impact that climate change is already having on human rights. With increasing similar claims based on ECHR rights at the national level in Europe, the Court has the opportunity to clarify Convention standards (AS para. 38-40). The Applicants are also clearly victims in respect of Art. 6 and 13 as they were parties in the domestic proceedings (AS para. 41).

RESPONDENT FAILED TO SET CLIMATE TARGETS THAT ARE IN LINE WITH INTERNATIONAL CLIMATE LAW AND THE BEST AVAILABLE SCIENCE (AS Section 1.3)

8. Respondent's domestic reduction targets will lead to dangerous climate change and are not in line with international climate law and best available science. In 1993, Switzerland ratified the United Nations Framework Convention on Climate Change ("UNFCCC") with the ultimate objective to stabilise "the GHG concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." As the global scientific consensus has evolved, parties to the UNFCCC have recognised that the 2010 agreed temperature limit of 2°C above pre-industrial levels is no longer safe. Since 2015, parties, including Switzerland, have committed themselves to the Paris Agreement's temperature limits of "well below 2°C" and to "pursue efforts to limit the temperature increase to 1.5°C" (Art. 2(1)(a); AS para. 15). In 2018, the IPCC published its "Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related emission pathways" (1.5°C SR). The 1.5°C SR stressed the importance of limiting temperature increase to 1.5°C instead of 2°C, as this would reduce climate impacts substantially, including heat-related mortality and morbidity (p. 722). Since 2018, the global political and scientific consensus is that a 1.5°C limit is the benchmark for countries to calibrate their mitigation efforts (AS para. 16).

9. Respondent's 2020 climate target fails even to meet the outdated 2°C limit. Art 3(1) of the CO2 Act requires Respondent to reduce its domestic GHG emissions by 20% below 1990 levels by 2020. Respondent's 2020 target is five percentage

Statement of the facts (continued)

60. points lower than the IPCC's Fourth Assessment Report ("AR4")'s recommendation as the absolute minimum for developed countries like Switzerland to achieve to have a 66% chance of meeting the (now outdated) 2°C limit (p. 757) (AS para. 17).

10. The same applies to Respondent's 2030 climate target. In 2017, the Federal Council proposed to parliament a domestic emission reduction of 30% below 1990 levels by 2030. Parliament, in opposition to the Federal Council's proposal, recently raised the domestic target to 37.5% (p. 773 f.). Both these emissions reduction targets fail to achieve the IPCC's recommended targets. In its Fifth Assessment Report ("AR5"), the IPCC stated that countries such as Switzerland must achieve domestic reductions of at least 40% and possibly as much as 100% by 2030 compared to 1990 levels to have a 66% probability of remaining within the outdated 2°C limit (pp. 769 and 771; AS para. 18).

11. A fortiori, in failing to meet the outdated 2°C limit, Respondent's emission reduction targets for 2020 and 2030 are "significantly below what needs to be done" (p. 776) to meet its Paris Agreement commitments (AS paras. 19-21).

RESPONDENT FAILED TO IMPLEMENT AND ENFORCE MEASURES TO MEET ITS INADEQUATE 2020 TARGET (AS Section 1.4)

12. Respondent's Federal Department of the Environment, Transport, Energy and Communications ('DETEC') admitted already in 2016 that it will miss its (insufficient) 2020 domestic target (p. 781). This failure was reaffirmed in 2020 by the Federal Office for the Environment ('FOEN').

STAYING WITHIN THE PARIS LIMIT WOULD SIGNIFICANTLY REDUCE THE RISK OF HEAT-RELATED EXCESS MORTALITY AND MORBIDITY FOR THE APPLICANTS (AS Section 1.5)

13. A temperature rise from 1.5° to 2°C would significantly increase the risk of heat-related excess mortality (p. 786 f., 789). Limiting temperatures to 1.5°C instead of Switzerland's current path towards 3°C will prevent at least 1,550 heat-related deaths per year – predominantly for older women such as the Applicants.

THE APPLICANTS' REQUEST FOR PROTECTION (AS Section 1.6)

14. On 25 November 2016, the Applicants submitted a request to cease failing in climate protection under Art. 25a of the Federal Act on Administrative Procedure (APA) and Art. 6 § 1 and 13 ECHR (doc. 14). They directed the request to the Federal Council, DETEC, FOEN and the Swiss Federal Office of Energy ('SFOE') (jointly: Respondent Government). Based on Art. 10 (right to life and to personal freedom) of the Swiss Constitution (Cst.) and Art. 2 and 8 ECHR, Applicants demanded that the Respondent Government take all necessary actions to implement targets that align with "well below 2°C" and to take all necessary mitigation measures to reach this target and that the current 2020 reduction target of 20%, although insufficient, be achieved (AS paras. 24-25).

RESPONDENT GOVERNMENT AND THE COURTS REFUSED TO ADDRESS THE MERITS OF THE APPLICANTS' REQUEST FOR PROTECTION (AS section 1.7)

15. In a ruling dated 25 April 2017 (doc. 15), DETEC denied the Applicant's standing. DETEC held that the Applicants were not directly affected in terms of Art. 25a APA, because "their goal is to reduce CO2 emissions not only in the applicants' immediate surroundings, but worldwide" (doc 15, section 1.2). For similar reasons, it rejected claims to effective legal protection under the ECHR. On 26 May 2017, Applicants appealed to the Federal Administrative Court ('FAC'; doc. 16). The FAC dismissed the appeal on 27 November 2018 (doc. 17), stating that Art. 25a APA was not applicable because Applicants were not "particularly" affected compared to the general public. The FAC also rejected claims to effective legal protection under Art. 6 and 13 ECHR and failed to examine Art. 2 and 8 ECHR (AS para. 27). On 21 January 2019, Applicants appealed to the Federal Supreme Court ('FSC'; doc. 18). The FSC dismissed the appeal on 5 May 2020 (doc. 19). The FSC found that the Applicants – "like the rest of the population" – are not threatened by the alleged Respondent Governments' omissions "with sufficient intensity". According to the FSC, there was still time to prevent global warming exceeding the limit of "well below 2°C", as this limit would not be reached until after 2040. For the same reason, the Applicants had in respect of Art. 2 and 8 ECHR no "arguable claim" under Art. 6 and 13 and were "not violated in these rights, either" (doc. 19, para. 7; AS para. 28).

URGENCY OF THE CASE (AS section 1.8)

16. Only limited time is left to vindicate the Applicants' right to life and family and private life. Each additional tonne of CO2 emitted increases the CO2 concentration in the atmosphere and increases the risk of breaching critical thresholds, resulting in irreversible and uncontrollable climate impacts. It also increases the severity and frequency of heatwaves in a practically irreversible manner, certainly during the lifetime of the Applicants. That, in turn, increases the negative health effects on the Applicants and increases the likelihood of their premature death. This particularity of climate change requires immediate measures to limit GHGs (AS paras. 29-31).

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
Article 6 (1) ECHR	<p>The Applicants claim a violation of their right to effective access to a court (AS section 3.1). Respondent's domestic courts did not assess the dispute or only did so arbitrarily and incidentally. The Applicants meet all the applicability requirements (AS paras. 42-44). However, none of the courts analysed critical questions on the merits of their claims, e.g. vulnerability of the Applicants to extreme heatwaves; harm from heat-related afflictions suffered by Applicants 2-5, the legislative and administrative framework necessary to effectively protect the Applicants' rights. The courts applied standing requirements arbitrarily, impairing the essence of those rights (AS para. 45).</p>
Articles 2 and 8 ECHR	<p>The FAC's assessment that the Applicants were not "particularly" affected in comparison to the general public is contrary to the best available scientific evidence (AS para. 46). The FSC devised a new arbitrary conclusion: that there is still time to combat dangerous climate change and therefore there is no arguable claim of right under Art 10 Cst. or Art 2 & 8 ECHR. This is scientifically and legally wrong. The scientific evidence shows that states must reduce GHG emissions now to prevent the worst impacts and avoid dangerous climate change. The FSC's conclusion is legally wrong: first, it means the only appropriate time for Applicants to vindicate their rights would be when it is too late to redress the harm: secondly, it implies that Respondent's duty of care threshold under Art. 2 & 8 ECHR is based on the time left to exceed a global target, instead of evaluating whether there is a "real and serious" risk for the Applicants (AS paras. 47).</p> <p>In obiter dictum, the FSC wrongly held that the Applicants' rights under Art. 2 and 8 ECHR "are not violated" (doc. 19 para. 7; AS para. 49). On the contrary: Respondent is continuously violating Applicants' rights under Art. 2 and 8 ECHR by failing to comply with its positive obligation to put in place all necessary measures to protect the Applicants effectively, i.e. to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C (AS section 3.2).</p> <p>Art. 2 and 8 ECHR overlap in environmental matters and impose a positive obligation on Respondent to put in place a legislative and administrative framework to provide effective protection against threats to the right to life and to the right to family and private life, respectively (AS para. 50). Due to the magnitude of the risks climate change imposes, the clear scientific consensus, the urgency of the situation and the clear ultimate objective under international climate law, this case differs from other environmental harm cases, and Respondent has to take all measures that are neither impossible nor disproportionately economically burdensome with the objective of reducing GHG to a safe level (AS para. 51). Respondent has the onus to show that it is "do[ing] everything in [its] power" (Kolyadenko §§ 191, 216; AS para. 51).</p> <p>Art. 2 ECHR works preventively and does not require death to occur (Öneryildiz §§ 71, 89-90). Art. 8 ECHR applies to cases of environmental degradation associated with adverse health, physical integrity or private life (Fadeyeva § 68), including the right to personal autonomy and to "ageing in dignity" (AS paras. 52-53).</p> <p>The real and serious risk (Tătar § 107) to the Applicants' rights should be assessed taking due account of the following: 1) recurring heatwaves in the last years have already led to heat-related excess mortality and morbidity (section 1.1), and 2) there is evidence of the seriousness of the risks presented to the Applicants and medical evidence that the Applicants have already been harmed (section 1.2). Respondent, having endorsed the IPCC's findings, knows about the real and serious risk of harm posed by dangerous climate change, including extreme heatwaves, to the Applicants (AS paras. 54-55). The scope of Respondent's obligation to protect derives from the following: International law (Al-Adsani § 55), namely Switzerland's obligations under the Paris Agreement to limit the increase in the global average temperature to "well below 2°C"</p>

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked	Explanation
	<p>and to “pursue efforts to limit the temperature increase to 1.5°C” (Art. 2(1)a) and to do its fair share of the global effort as a developed country; the precautionary principle, including the prevention principle; the best available science, notably the IPCC science, which shows the action required of Respondent to do its fair share and mitigate the risk of harms for the Applicants, and finally evolving norms of national and international law recommending that Respondent raise its climate targets, i.a. to protect older women (AS para. 56).</p> <p>To comply with its positive obligation to put in place all necessary measures to protect Applicants effectively (Cordella § 173), Respondent has to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels. Respondent must establish a corresponding legislative and administrative framework. With its current and planned climate targets and measures (see AS sections 1.3 and 1.4), Respondent has failed. Instead, Respondent’s current and planned reduction targets do not even achieve the outdated 2020 target, let alone that which is required to protect the Applicants (section 1.3). Thus, Respondent has failed to protect the Applicants effectively. Respondent’s approach is marked by delays and insufficient enforcement (AS para. 57).</p> <p>Respondent’s margin of appreciation is limited to determining the measures with which to fulfil its duty to protect: 1) this is an issue of compliance with international standards recognised by Respondent (Bor § 24, 27); 2) fundamental rights such as Art. 2 and 8 ECHR are at stake and 3) this is an increasingly urgent situation with risks of irreversible harm. There is no discretion as to the level of ambition, Respondent must to do its fair share to stay within the 1.5°C limit (Fadeyeva §§ 124-134; AS para. 58).</p>
Article 13 in conjunction with Articles 2 and 8 ECHR	<p>The Applicants’ right to an effective remedy was violated since no national authority examined the substance of their complaint (AS section 3.3). Their claim is "arguable" in terms of Art. 13 since they are victims of Convention violations. DETEC refused to enter into the matter based on Art. 25a APA or Art. 13 ECHR, still less to undertake a substantive review of Art. 2 and 8 ECHR. The FAC and the FSC both upheld DETEC’s refusal. Also, the remedy was ineffective concerning the relevant period. The time to reduce emissions for 2020 and 2030 in line with the both “well below 2°C” and the 1.5°C limit is now. Should an effective remedy only be granted once global warming approaches 2°C, as appears to be the FSC’s approach, it would be too late for Respondent to do its share to stay within the 1.5°C or “well below 2°C”. Applicants 2–5, as older women, would be denied any protection at all.</p>
All of the above	<p>Given the above, it is respectfully submitted that the Respondent has violated the Applicants’ rights under Art. 2 and 8 and 6 and 13.</p>

G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

63. Complaint	Information about remedies used and the date of the final decision
Article 35(1)	<p>The Applicants have exhausted their domestic remedies, as shown below. The Applicants are compliant with the time limits establish by the Court. In particular with the Court's extension of 16 March 2020. According to the spring 2020 COVID-19 Exceptional measures "everyone whose six-month time-limit starts, runs or expires during the period of 16 March – 15 June 2020 will have nine months from the date of the final domestic decision to lodge an application with the Court" (doc. 1, p. 1). The Applicants' six-month time limit started on 20 May 2020 (doc. 19). The Applicants therefore meet the three-month extension to lodge an application with the Court.</p>
Articles 2 and 8 ECHR	<p>Request to the Federal Council, to the DETEC, the FOEN and the SFOE, 25 November 2016 (doc. 14). Ruling by the DETEC acting also on behalf of the Federal Council, the FOEN and the SFOE, 25 April 2017 (doc. 15). Appeal to the Federal Administrative Court FAC, 26 May 2017 (doc. 16). Judgment by the FAC, A-2992/2017, 27 November 2018 (doc. 17) Appeal in matters of public law to the FSC, 21 January 2019 (doc. 18). Judgment by the FSC, 1C_37/2019, 5 May 2020, received on 19 May 2020 (doc. 19).</p>
Articles 6 and 13 ECHR	Idem.

Additional Submission

1. **Statement of facts (see section E of Application Form)**
 - 1.1. **Heatwaves cause deaths and illnesses to older women including the Applicants**
 - 1 The average annual temperature in Switzerland has increased around 2.1°C, since measurements began in 1864.¹ From 1961 onwards, in Switzerland, the temperature increase is three times as fast as the trend over the entire measuring period.² The summers of 2003, 2015, 2018 and 2019 were, as acknowledged by Respondent, the four warmest summers recorded in Switzerland.³ During these summers, there were more deaths than in average years, according to Respondent.⁴ The increase in mortality is primarily because heat stress can cause life-threatening cerebral vessel, cardiovascular and respiratory tract diseases.⁵ According to the IPCC, it is “likely” (i.e., likelihood of 66%–100%) that the increased mortality during heatwaves is attributable to human-induced global warming.⁶ More recent studies have provided further scientific evidence that climate change-induced heatwaves are causing adverse health effects.⁷
 - 2 As Respondent reported, in Switzerland almost **1,000** additional heat-related deaths occurred in June and August 2003,⁸ approximately **800** additional heat-related deaths in June, July and August 2015,⁹ **177** additional heat-related deaths in August 2018¹⁰ and **521** in June, July and August 2019.¹¹
 - 3 Heatwaves not only entail increased mortality but also negatively impact health by contributing to dehydration, hyperthermia, fatigue, loss of consciousness, heat cramps and heat strokes, as Respondent states.¹²

¹ As of 2019. See Federal Office of Meteorology and Climatology MeteoSwiss, Climate Change in Switzerland, last modified 5 Feb. 2020 (*doc. 20*).

² FOEN et al., Klimawandel in der Schweiz, Bern 2020, p. 30 (*doc. 21 p. 693*).

³ FOEN, Hitze und Trockenheit im Sommer 2018, Bern 2019, p. 8 (*doc. 22 p. 698*); for the year 2019 see MeteoSchweiz 2020, Klimareport 2019, Zürich, p. 6 (*doc. 23 p. 707*).

⁴ FOEN (n 3), p. 28 (*p. 702*).

⁵ FOPH AND FOEN, Schutz bei Hitzewelle, Bern 2007, p. 1 and 3 (*doc. 24 pp. 708 and 710*).

⁶ IPCC, Fifth Assessment Report 2014 (AR5), Impacts, Adaptation, and Vulnerability, p. 720 (*doc. 25, p. 716*).

⁷ IPCC, Special Report: Global Warming of 1.5°C, 2018 (1.5°C SR), p. 240 (*doc. 26 p. 723*).

⁸ FOPH AND FOEN (n 5), p. 1 (*p. 708*); FOEN, Hitze und Trockenheit im Sommer 2015, Bern 2016, p. 82 (*doc. 27 p. 730*).

⁹ FOEN (n 8), p. 5 (*p. 729*).

¹⁰ FOEN (n 3), p. 28 (*p. 702*).

¹¹ RAGETTI/RÖSLI, Gesundheitliche Auswirkungen von Hitze in der Schweiz und die Bedeutung von Präventionsmassnahmen, July 2020, p. 6 (*doc. 28, p. 735*).

¹² FOEN (n 3), p. 27 (*p. 701*); FOPH AND FOEN (n 5); WATTS ET AL., The 2018 report of the *Lancet* Countdown on health and climate change, Dec. 2018, p. 2484 f. (*doc. 29, p. 738 f.*).

- 4 Heat-related deaths are not distributed randomly across the population but occur, as Respondent states, much more frequently in older persons, and especially in older women such as the Applicants.¹³ Older persons are significantly affected due to impaired thermoregulation.¹⁴ During the 2003 heatwave, 80% of the additional deaths occurred in persons older than 75.¹⁵ Respondent states that the hot summer of 2015 caused the most significant rise in mortality risk for 75 to 84-year-olds out of all age groups.¹⁶ In August 2018, compared with the general population, older women experienced the most significant increase in heat-related mortality when nearly 90% of heat-related deaths (159 of 177) occurred in older women, almost all of whom were older than 75.¹⁷ During the 2019 heatwave, older persons were at the highest risk of mortality, and people aged 85 and over were most affected (448 of 521).¹⁸
- 5 The IPCC confirms that older adults, women and persons with chronic diseases are populations at the highest risk of temperature-related morbidity and mortality.¹⁹ As demonstrated by science, women aged above 75, such as the Applicants, are at greater risk of premature loss of life, severe impairment of life and of family and private life, due to climate change-induced excessive heat than the general population.²⁰ Thus, the Applicants are part of a vulnerable group due to their age and gender.

1.2. The Applicants are directly affected by climate change-induced heatwaves

- 6 In 2016, a group of older women founded an association called KlimaSeniorinnen (Applicant 1). Being significantly at risk due to climate change-induced heatwaves in the past, currently (section 1.1) and in the future (section 1.5), Applicant 1 advocates for older women's health and their human rights in a dangerously warming world (Art. 2 and 3 statutes, doc. 2).

¹³ FOEN (n 3) p. 29 (*p. 703*); FOPH AND FOEN (n 5); ROBINE et al., Report on excess mortality in Europe during summer 2003, February 2007, Figure 5 (*doc. 30 p. 741*); ROBINE et al., Death toll exceeded 70,000 in Europe during the summer of 2003, C. R. Biologies 331 (2008) 171–178, p. 174 (*doc. 31 p. 743*); WHO, Gender, Climate Change and Health, Geneva 2010, p. 9 (*doc. 32 p. 740*); DOMBOIS et al., Gesundheitliche Auswirkungen der Klimaänderung mit Relevanz für die Schweiz, Nov. 2004, p. 33 (*doc. 33 p. 750*).

¹⁴ FOEN (n 3), p. 27 (*p. 701*).

¹⁵ IPCC, AR5 (n 6), p. 721 (*p. 717*).

¹⁶ FOEN (n 8), p. 84 (*p. 731*).

¹⁷ FOEN (n 3), p. 28 (*p. 702*).

¹⁸ RAGETTI/RÖÖSLI (n 11), p. 16 (*p. 736*).

¹⁹ IPCC, 1.5°C SR (n 7), p. 240 f. (*p. 723 f.*).

²⁰ FOEN (n 3), p. 28 (*p. 702*).

- The average age of the members of Applicant 1 is currently 73 years. 650 of 1,855 members are 75 years old or older (doc. 3).
- 7 Applicants 2–4 have already suffered and continue to suffer from heat-related illnesses, as evidenced by their medical certificates. Applicants 2–5 describe in personal statements attached to this application how their health and well-being are affected by heatwaves (doc. 4, 5, 6 and 7).
 - 8 Applicant 2 is 89, wears a pacemaker and lost consciousness resulting from a heatwave in the summer of 2015 (doc. 8).
 - 9 Applicant 3 is 83. During hot summers, she cannot leave her residence and is cut off from the outside world. She has a cardiovascular illness, and heatwaves not only seriously impair her well-being, but also her physical capabilities (doc. 9). Further, in 2019, her doctor confirmed that because of her medical situation, she has a severe intolerance to excessive heat, which confines her to her home. As a result, her medication had to be adjusted (doc. 10).
 - 10 Applicant 4 is 79. Her mobility is restricted during heatwaves as excessive heat exacerbates her acute asthma and chronic obstructive pulmonary disease (doc. 11). In 2020, her doctor confirmed that she has chronic asthma with chronic broncho-structural syndrome, which is being treated. Hot periods exacerbate her symptoms (doc. 12).
 - 11 Applicant 5 is 78. She suffers from asthma (doc. 13).
 - 12 Furthermore, as shown above, all Applicants have been, are and will be at great risk of premature loss of life and severe impairment of quality of life solely because they are women above the age of 75. The risk for Applicants 4 and 5 risk is further exacerbated due to their respiratory diseases.²¹
 - 13 The Applicants' lives and health have been, currently are and will be threatened by periods of extreme heat that recur every few years and are expected to increase in frequency over time.²² Respondent states that conditions experienced during hot summers are “likely to become the norm” due to climate change.²³

²¹ D'IPPOLITI ET. AL., The impact of heat waves on mortality in 9 European cities, *Environmental health* 2010, 9:37, p. 1 (*doc. 34 p. 751*); WATTS ET AL. (n 12), p. 2484 f. (*p. 738 f.*).

²² See FOEN (n 3), pp. 8 and 11 (*pp. 698 and 699*).

²³ FOEN (n 3), p. 5 (*p. 697*).

1.3. Respondent failed to set climate targets that are in line with international climate law and best available science

- 14 The Applicants show below in detail why Respondent's 2020 and 2030 emission reduction targets will contribute to highly dangerous levels of climate change. These targets are not aligned with Respondent's obligations under the Paris Agreement or with the best available science. These facts show that Respondent is failing on its duty to protect under Art. 2 and 8 (see section 3.2).
- 15 It is the ultimate objective of the UNFCCC, ratified by Switzerland in 1993, to "prevent dangerous anthropogenic interference with the climate system."²⁴ To reach that goal, in the Cancún Agreements 2010, Switzerland committed to "reducing global greenhouse gas emissions to (...) below 2°C above pre-industrial levels". It also recognised the need to "strengthen the long-term global goal *on the basis of the best available scientific knowledge*."²⁵ Later, due to scientific advances that demonstrated that the 2°C limit is no longer considered as "safe"²⁶ the Parties, including Switzerland, committed in the Paris Agreement²⁷ to hold the increase in global average temperature to "well below 2°C" and to "pursue efforts to limit the temperature increase to 1.5°C" (Art. 2(1)(a)).
- 16 In adopting the Paris Agreement, the parties invited the IPCC to provide a special report on the impacts of global warming of 1.5°C,²⁸ which it did in 2018. The 1.5°C SR shows that limiting the temperature increase to 1.5°C instead of 2°C would reduce the risks and impacts substantially, including limiting the risks for heat-related mortality and morbidity.²⁹ Since the release of the 1.5°C SR, the global political and scientific consensus is that a 1.5°C limit is the benchmark for countries to calibrate their mitigation efforts.³⁰

²⁴ Art. 2 UNFCCC.

²⁵ CONFERENCE OF THE PARTIES TO THE UNFCCC, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action Under the Convention, Decision 1/CP.16, § 4.

²⁶ Subsidiary Body for Scientific and Technological Advice, Report on the structured expert dialogue on the 2013-2015 review, Bonn 2015, Message 5 p. 18 (*doc. 35 p. 754*).

²⁷ Paris Agreement, SR 0.814.012; signed by the Federal Council on 22 April 2016, approved by the Federal Assembly on 16 June 2017, ratified on 6 October 2017.

²⁸ CONFERENCE OF THE PARTIES TO THE UNFCCC, Adoption of the Paris Agreement. Decision 1/CP.21, § 21.

²⁹ IPCC, 1.5°C SR (n 7), p. 180 (*p. 722*).

³⁰ RAJAMANI/GUÉRIN in: KLEIN ET AL. (eds.), The Paris Agreement on Climate Change, Oxford 2017, p. 76.

1.3.1. Respondent's 2020 and 2030 climate targets fail to meet the outdated 2°C limit

- 17 Art. 3(1) of Switzerland's CO₂ Act,³¹ in force since 2013, requires Switzerland to reduce its domestic GHG by 20% below 1990s levels by **2020**. Six years earlier, the IPCC's AR4 had stated that developed countries like Switzerland must reduce their *domestic* emissions by 25%-40% below 1990 levels by 2020 to meet the (now outdated) 2°C limit with a 66% probability,³² noting this still entails a 33% risk of not achieving the target. Respondent has recognised this obligation.³³ Respondent is still falling short of the IPCC's then-suggested minimum reduction of 25% domestically by at least five percentage points.
- 18 In 2017, the Federal Council proposed to Parliament a domestic emission reduction of 30% below 1990 levels by **2030**.³⁴ In 2014, the IPCC had stated in AR5 that countries such as Switzerland have to achieve *domestic* reductions of at least 40% and possibly as much as 100% by 2030 to have a 66% probability of remaining within the outdated 2°C limit.³⁵ On average, the IPCC indicated the need for domestic reduction of 50% by 2030.³⁶ Thus, in light of IPCC science, the reduction envisaged by the Federal Council failed by at least 20% to aim for the outdated 2°C limit. This conclusion remains unchanged even though Parliament, in a counter-proposal to the Federal Council, just recently raised the domestic target to 37.5%.³⁷

1.3.2. Respondent's 2020 and 2030 climate targets fail to meet the Paris 1.5°C limit all the more

- 19 *A fortiori*, in failing to meet the outdated 2°C limit, Respondent also fails to meet its Paris Agreement commitments of limiting temperature rise to "well below 2°C" and to pursue efforts to limit the temperature increase to 1.5°C.

³¹ SR 641.71.

³² IPCC, AR4, Mitigation of Climate Change, p. 776 Box 13.7 (*doc. 36 p. 757*).

³³ See BBl 2009 7433, 7446 (*doc. 37 p. 759*) as well as BBl 2012 2075, 2130 (*doc. 38 p. 761*); see request, para. 59 for further references (*doc. 14 p. 88*).

³⁴ The Federal Council proposed to the parliament in BBl 2018 247, 248 dated 1 Dec. 2017, that of total 50 % emission reductions compared to 1990 60 % shall be domestic reduction (*doc. 39 p. 763*). See also BBl 2018 385, 386 (*doc. 40 p. 765*).

³⁵ IPCC, AR5, Mitigation of Climate Change, p. 460 figure 6.28 and p. 13 table SPM.1 (*doc. 41 pp. 771 and 769*) where it can be seen that with CO₂eq concentrations of 430–480 in 2100 temperature change will "likely" stay below 2°C.

³⁶ IPCC, AR5 (n 35), p. 459 (*p. 770*).

³⁷ See text of the final vote in BBl 2020 7847, 7848 f., Art. 3 CO₂ Act (*doc. 42 p. 773 f.*). The referendum period is running.

- 20 The 1.5°C SR states that to have a chance of keeping global temperature increase within the Paris temperature limits, *global* CO₂ neutrality must be achieved by 2050 with approximately halving of emissions by 2030.³⁸
- 21 In light of the Paris Agreement, Respondent’s emission reduction targets are “significantly below what needs to be done”.³⁹ If all countries globally pursued the same inadequate climate commitments as Switzerland, a wealthy and developed country, the global average temperature would increase to 3°C.⁴⁰

1.4. Respondent failed to implement and enforce measures to meet its (inadequate) 2020 target

- 22 In addition to the inadequacy of the targets themselves, Respondent admits that its current climate policy is insufficient to achieve even the existing 2020 target. Already in 2016, DETEC expected to miss the 2020 target of 20% domestic GHG reduction. In the absence of further measures, DETEC assessed that emissions would only be reduced by 12.3%.⁴¹ Yet, no additional measures were implemented, except for more stringent emission limits for new passenger cars.⁴² On 15 April 2020, FOEN reiterated that “from today’s perspective, Switzerland will miss its national climate target for 2020.”⁴³ Existing emission reduction measures are admittedly insufficient to achieve the inadequate reduction target, and implementation of climate change legislation has failed,⁴⁴ which is further putting the Applicants’ lives and health at risk.

1.5. Staying within the Paris limit would significantly reduce the risk of heat-related excess mortality and morbidity

- 23 The global scientific consensus is that many premature deaths and health impairments can be prevented by following the most recent 1.5°C SR.⁴⁵

³⁸ IPCC 1.5°C SR (n 7), Summary for Policy Makers, C.1 (p. 721); see request para. 36 and section 4.2.2.2 (doc. 14 p. 77 ff.); see appeal to FSC, para. 34 (doc. 18 p. 76).

³⁹ Independent scientific analysis of Switzerland’s commitments in light of the Paris Agreement by the Climate Action Tracker, Switzerland, Country summary, 2019 (doc. 43).

⁴⁰ Climate Action Tracker (n 39).

⁴¹ DETEC, Climate policy of Switzerland: Explanatory Report on the draft for consultation, 31 Aug. 2016, p. 29 (doc. 44 p. 781).

⁴² Art. 10(1) CO₂ Act, in force since 1 January 2018.

⁴³ FOEN, Schweizer Treibhausgasemissionen 2018 nur leicht gesunken, 15 April 2020 (doc. 45).

⁴⁴ For detailed analysis see request, sections 4.3.2 and 8.5 (doc. 14 p. 90 ff. and 198 ff.).

⁴⁵ VICEDO-CABRERA ET AL., Temperature-related mortality impacts under and beyond Paris Agreement climate change scenarios, Climatic Change, 13 September 2018, pp. 394 and 396 (doc. 46 pp. 785 and 787); IPCC 1.5°C SR (n 7), p. 240 and Summary for Policymakers, B. 5.2 (pp. 723 and 720).

Adhering to this consensus would reduce the risk to the Applicants' life and health. Already a temperature rise from 1.5° to 2°C would significantly increase the risk of heat-related excess mortality.⁴⁶ If global average temperature increases to 3°C, as opposed to 1.5°C, Switzerland is projected to experience an increase in heat-related deaths *by around 2.5%*. This projection would increase by *almost 5%* in a 4°C scenario.⁴⁷ Limiting temperatures to 1.5°C instead of Switzerland's current path towards 3°C will prevent at least 1,550 heat-related deaths per year – predominantly for older women such as the Applicants.⁴⁸

1.6. Applicants' request for protection in the domestic proceedings

- 24 On 25 November 2016, the Applicants submitted a request to stop omissions in climate protection pursuant to Art. 25a APA and Art. 6 § 1 and 13 ECHR (doc. 14). They directed the request to the Respondent Government. Based on Art. 10 Cst. (right to life and to personal freedom) and Art. 2 and 8 ECHR, the Applicants demanded that the Respondent Government undertake effective and preventive actions to protect them from the effects of increasing temperatures, i.e. more frequent and stronger heatwaves.
- 25 In particular, the Applicants demanded the Respondent Government take all necessary actions to implement targets that align with “well below 2°C” and to take all necessary mitigation measures to reach this target. Additionally, the Applicants requested that the current 2020 reduction target of 20%, although insufficient, be achieved.

1.7. The Respondent Government and the courts refused to address the merits of the Applicants' request for protection

- 26 In a ruling dated 25 April 2017 (doc. 15), DETEC denied the Applicants' standing. DETEC stated that the Applicants' rights were not directly affected in terms of Art. 25a APA, because “their goal is to reduce CO₂ emissions not only in the applicants' immediate surroundings, but worldwide” (doc. 15,

⁴⁶ VICEDO-CABRERA ET AL. (n 45), p. 395 f. figure 1 and 2 (*p. 786 f.*), see also GASPARRINI ET AL., Projections of temperature-related excess mortality under climate change scenarios, *Lancet Planet Health* 2017 Vol. 1 December 2017, p. 366 (*doc. 47 p. 789*).

⁴⁷ VICEDO-CABRERA ET AL. (n 45) p. 396, figure 2 (*p. 787*); see also GASPARRINI ET AL. (n 46), p. 366 (*p. 789*).

⁴⁸ Federal Statistical Office FSO, Todesursachenstatistik, January 2019, p. 3, where it can be seen that between 1987 and 2007, every year, 62 000 persons died (*doc. 48 p. 792*).

section 1.2). For similar reasons, it rejected Applicants' claims to effective legal protection under the Convention.

- 27 On 26 May 2017, the Applicants appealed to the FAC (doc. 16). The FAC dismissed the appeal on 27 November 2018 (doc. 17), stating that Art. 25a APA was not applicable because the Applicants were not "particularly" affected in comparison to the general public. It also rejected claims to effective legal protection under Art. 6 and 13 ECHR, holding that the actions demanded would not directly contribute to the reduction of GHG emissions. The FAC ultimately failed to examine the claims under Art. 2 and 8 ECHR.
- 28 On 21 January 2019, the Applicants appealed to the FSC (doc. 18). It dismissed the appeal on 5 May 2020 (doc. 19). The FSC found that rights of the Applicants – "like the rest of the population" – are not threatened by the alleged omissions of the Respondent Government "with sufficient intensity" (i.e. Art. 10 and 13 Cst., Art. 2 and 8 ECHR). According to the FSC, there was still time to prevent global warming exceeding the limit of "well below 2°C", as this limit would not be reached until after 2040. For the same reason, the FSC found that in respect of Art. 2 and 8 ECHR, the Applicants had no "arguable claim" under Art. 6 and 13 ECHR and were "not violated in these rights, either" (doc. 19 para. 7).

1.8. The urgency of the case

- 29 The "environmental emergency" seriously threatens human rights.⁴⁹ Only limited time is left to vindicate the Applicants' rights to life and to family and private life. *Each additional tonne of CO₂ emitted increases the CO₂ concentration in the atmosphere and worsens climate impacts, including the severity and frequency of heatwaves in a practically irreversible manner, certainly during the lifetime of Applicants 2–5. That, in turn, increases the adverse health effects on the Applicants and increases the likelihood of their premature death. This particularity of climate change requires immediate measures to limit GHGs.*
- 30 Switzerland can only add a limited amount of CO₂ to the atmosphere before its total contribution exceeds the 1.5°C threshold (para. 16). This "CO₂ budget" will be used up in approximately three years.⁵⁰ Staying within the

⁴⁹ See SICILIANOS, Solemn Hearing on the occasion of the opening of the judicial year, 31 January 2020.

⁵⁰ Calculation of the remaining CO₂-budget by the Applicants (*doc. 49*).

1.5°C limit would significantly reduce the risk of heat-related excess mortality and morbidity (section 1.5).

31 There is broad consensus that delaying emission reductions will make it harder and more expensive to stay within the 1.5°C limit, increasing the harms and risks for the Applicants. Postponing measures also creates a greater risk of exceeding critical thresholds known as “tipping points” which can “lead to a significant change in the state of the system, often with an understanding that the change is irreversible”.⁵¹

2. The Applicants’ victim status in the face of climate change-induced heatwaves (see section E of Application Form)

2.1. The Applicants’ victim status in respect of Art. 2 and 8 ECHR

32 The term “victim” is an autonomous concept⁵² and must be interpreted irrespective of domestic definitions such as those concerning an interest or capacity to act.⁵³ Establishing victim status requires a violation to be conceivable;⁵⁴ whether a violation exists should be decided on the merits.

33 In terms of Art. 34 ECHR, Applicants 2–5 are *direct victims* of Respondent’s omissions, because

- they *have suffered and continue to suffer* personally from heat-related afflictions (see paras. 7 ff.);
- with every heatwave, *they were and continue to be* at a *real and serious risk of mortality and morbidity* greater than the general population⁵⁵ (para. 4 f.), whereas the risk to applicants 4 and 5 is *even higher* due to their respiratory diseases (see para. 12);⁵⁶
- of the “cumulative effect” of all the consequences the Applicants already experience and will experience;⁵⁷ and
- this application does not concern the general degradation of the environment.⁵⁸

⁵¹ IPCC 1.5°C SR (n 7), p. 262 (p. 725).

⁵² *Aksu v. Turkey* [GC], no. 4149/04, § 52.

⁵³ See *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35.

⁵⁴ *Brumărescu v. Romani*, 28342/95, § 50. See also: LEMMENS in: VAN DIJK ET AL (eds), *Theory and Practice of the European Convention on Human Rights*, 2018, p. 52.

⁵⁵ See *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33-35.

⁵⁶ *Open Door and Dublin Well Women v. Ireland*, no. 14234/88, § 44; see also *Talpis v. Italy*, no. 41237/14, §§ 99, 126.

⁵⁷ *Grimkovskaya v. Ukraine*, no. 38182/03, § 62; See also *Fadeyeva v. Russia*, no. 55723/00, § 88.

⁵⁸ *Cordella and others v. Italy*, no. 54414/13, § 101.

- 34 Additionally, Applicants 2–5 are *potential victims* of Respondent’s failures because omissions in reducing GHG emissions in line with the Paris limit will significantly *increase* their risk of heat-related mortality and morbidity (see section 1.5). The Applicants have demonstrated this clearly based on epidemiological data and scientific evidence and herewith produced reasonable and convincing evidence of the probability of the occurrence of further violations of their rights.⁵⁹
- 35 Applicant 1 is a direct victim under Art. 34 ECHR. The association’s purpose is to prevent health hazards caused by *dangerous climate change* (doc. 2 section 2). It is therefore directly affected by Respondent’s omissions to limit GHG emissions to a *safe level*, in line with the Paris Agreement and best available science.⁶⁰ The Respondent’s omissions prevent Applicant 1 from furthering one of its main objectives.⁶¹ Importantly, Applicant 1 enables a particularly vulnerable group to exercise its rights in the long term, *regardless of the natural age-related retirement of some of its members*. Applicant 1 also offers many of its members the only viable way to defend their rights effectively.⁶² In that regard, it is noteworthy that the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) recommends that “States parties should also facilitate the participation of older women in decision-making for climate change mitigation and adaptation”.⁶³
- 36 Further, Applicant 1 is a direct victim under its second purpose: to defend the interests of its members, as part of a defined most vulnerable group (para. 4 ff.), in particular, by taking legal measures (doc. 2 section 3).⁶⁴ It is thus directly concerned by these proceedings.⁶⁵
- 37 Art. 2 and 8 ECHR are the vehicles by which environmental damage that adversely affects life and health can be brought before the Court. Applicant 1 and its members should not be deprived of the protection of Art. 2 and 8

⁵⁹ See *mutatis mutandis Cordella* (n 58), §§ 104-107.

⁶⁰ See *Gorraiz Lizarraga* (n 53), §§ 34-36.

⁶¹ *Open Door and Dublin Well Women* (n 56), § 44.

⁶² See *Gorraiz Lizarraga* (n 53), § 38: “And indeed, in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively.”

⁶³ Committee on Elimination of Discrimination Against Women, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, § 35 (*doc. 50 p. 796*).

⁶⁴ See *Rossi v. Italy*, no. 55185, “The applicant associations”.

⁶⁵ See *Izmir Savas Karsitlari Dernegi v. Turkey*, no. 46257/99.

- ECHR by the mere fact that Applicant 1 is a legal person.⁶⁶ This would be overly formalistic and ignore the important role that NGOs play in society.⁶⁷
- 38 There is a *sufficient close connection* between Respondent’s omissions in climate protection (sections 1.3 and 1.4) and the risk of heat-related mortality as well as the current and future impairments of the Applicants’ health (sections 1.1, 1.2 and 1.5).⁶⁸ Clearly, this is not altered by the fact that Switzerland is a small state.⁶⁹
- 39 The Applicants must not be denied victim status simply because a general public interest co-exists with their particular interest.⁷⁰ The Court’s case-law supports this approach.⁷¹ Since climate change impacts individual rights and the public at large, the imposition of a high threshold for victim status would be excessively formalistic and not a contemporary approach.⁷² The need for “effective protection” of ECHR rights requires that Art. 34 not be applied in a “rigid, mechanical and inflexible way.”⁷³ Rather, the term “victim” ought to be interpreted in an “evolutive manner.”⁷⁴ Any other interpretation of the concept would make protection of the rights guaranteed by the Convention *ineffective and illusory*. Inherently, *climate change measures can never benefit certain population groups exclusively*.

⁶⁶ See *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria*, no. 62540/00, § 60.

⁶⁷ See *Collectif national d’information à l’usine Melox – Collectif Stop Melox et Mox v France* (dec.), no. 75218/01, § 4 „la réalité de la société civile actuelle, dans laquelle les associations jouent un rôle important, notamment en défendant certaines causes devant les autorités ou les juridictions internes.“

⁶⁸ The criterion of the “close connection” is not applied in a rigid, mechanical and inflexible way, see *Zakharov v. Russia* (GC), no. 47143/06, § 164.

⁶⁹ See request, section 5.4.2 (*doc. 14, p. 127 ff.*); see Dutch Supreme Court, *Urgenda v. The Netherlands*, ECLI:NL:HR:2019:2007, 20 Dec. 2019, para. 5.7.7, as decisions of national courts, particularly those of an apex court of a Contracting State, are relevant sources for the ECtHR to take into account, see *Goodwin v. The United Kingdom*, no. 28957/95, § 74 and *Neulinger and Shuruk v. Switzerland*, no. 41615/07, §§ 69-74; see INTERNATIONAL LAW COMMISSION, Responsibility of States for Internationally Wrongful Acts, 2001, Art. 47 (8) and to this regard see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 338.

⁷⁰ See *Bursa Barosu Başkanlığı and Others v. Turkey*, no. 25680/05, § 128.

⁷¹ An implied public interest did not preclude the applicants’ complaint in *Tâtar v. Romania* where, aside from the impact on the applicants’ rights, rivers in Serbia and Hungary were polluted, nor in *Di Sarno v. Italy*, where a dysfunctional waste collection system affected an entire city. In *Aksu v. Turkey* the Court recognised that racist remarks in a schoolbook, albeit directed at many Roma, directly affected the applicant due to his membership of the ethnic group; therefore the application did not constitute an *actio popularis*: *Di Sarno and Others v. Italy*, no. 30765/08, § 81; *Tâtar v. Romania*, no. 67021/01, § 24; *Aksu* (n 52), §§ 50, 53-54; see also *L’Erablière A.S.B.L. v. Belgium*, no. 49230/07.

⁷² Compare the HRC, *Ioane Teitiota v. New Zealand*, §§ 8.5-8-6, where the HRC affirmed victim status “for the purpose of admissibility” in a case concerning climate change.

⁷³ *Micallef v. Malta* [GC], no. 17056/06, § 45; *Karner v. Austria*, no. 40016/98, § 25.

⁷⁴ *Gorraiz Lizarraga and Others* (n 53), § 38.

40 If the Applicants as members of a most vulnerable group were denied victim status, it is questionable who would then be entitled to this status in connection with global warming, which clearly has strong impacts on human rights. Over the past decade, a wide range of judicial, quasi-judicial and other institutions at the national, regional and international level have recognised the significant impact that climate change is already having, and will have, on the enjoyment of a wide range of human rights, including the rights to life and health.⁷⁵ Also, the Preamble of the Paris Agreement explicitly refers to the need for States to “respect, promote and consider their respective obligations on human rights” when “taking action to address climate change”. Against the background of increased Convention-based national claims in climate change lawsuits in Europe,⁷⁶ the Court should clarify Convention standards.

2.2. The Applicants’ victim status in respect of Art. 6 and 13 ECHR

41 Since the Applicants already acted in domestic proceedings, clearly they are victims insofar as Art. 6 and 13 are concerned.⁷⁷ As for the victim status of Applicant 1, Respondent has ratified the Aarhus Convention and thus recognises the importance of access to justice for legal persons to safeguard an environment adequate for health and well-being.⁷⁸

⁷⁵ See e.g., Supreme Court of Ireland, *Friends of the Irish Environment v. Ireland*, 31 July 2020, § 3.6; *Urgenda* (n 69), paras. 5.5.2, 5.3.2, 5.6.2; Supreme Court of Colombia, *Future Generations v Ministry of Environment and Others*, 4 April 2018, p. 10-11, §§ 11.2, 11.3; High Court Green Bench of Lahore, *Asghar Leghari v. Federation of Pakistan*, 4 Sept. 2015, §§ 6–8; Joint Statement of Five UN Human Rights Treaty Bodies on Human Rights and Climate Change, 16 Sept. 2019; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 15 July 2019, UN Doc A/74/161; and Report of the UN Special Rapporteur on Extreme Poverty and Human Rights, Climate change and poverty (25 June 2019) UN Doc A/HRC/41/39, par. 13; UN Human Rights Council Resolution 44/7, Human rights and climate change, A/HRC/44/L.5, 15 July 2020; UN High Commissioner for Human Rights, “Bachelet welcomes top court’s landmark decision to protect human rights from climate change”, 20 Dec. 2019.

⁷⁶ I.a., *Urgenda* (n 69); *Neubauer et al v. Germany*, 2020, Federal Constitutional Court (pending); *Notre Affaire à Tous et al v. France*, 2018, Paris Administrative Court (pending); *Greenpeace Nordic Association et al. v. Ministry of Petroleum and Energy*, 2016, Norwegian Court of Appeal (on appeal to Supreme Court) and *Greenpeace et al. v. Austria*, 2020, Constitutional Court (domestic remedies exhausted).

⁷⁷ See *Gorraiz Lizarraga* (n 53), § 36.

⁷⁸ See Preamble, UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998, entered into force in 2001), ratified by Switzerland in 2014; *Tatar* (n 71), § 118.

3. Complaints (see section F of Application Form)

3.1. Violation of Art. 6 (1) ECHR

- 42 Applicants claim a violation of Art. 6 (1) ECHR concerning their right to effective access to a court. Respondent's domestic courts did not assess the Applicants' dispute or only did so arbitrarily. The Applicants meet all the applicability requirements of Art. 6 (1) ECHR. The civil nature of the dispute is uncontested.⁷⁹ There are arguable rights in domestic law (para. 43), and a genuine and serious dispute exists requiring a decisive outcome for the rights in question (para. 44).
- 43 The dispute concerns the right to life under Art. 10 (1) Cst and the rights under Art. 2 & 8 ECHR in conjunction with the inadequate enforcement of the CO₂ Act and the inadequacy of the climate targets (sections 1.4 and 1.3). The rights of the Applicants are clearly "*arguable*" (see below, section 3.2).⁸⁰
- 44 The present dispute is *genuine and serious*, and the result of the proceedings is directly decisive for the rights in question.⁸¹ There is a clear connection⁸² between the rights under Art. 10 Cst and Art 2 & 8 ECHR and the application of CO₂-legislation (arguable right in domestic law) on the one hand, and the reduction of GHG (outcome of the proceedings) on the other hand. To protect the Applicants' from deadly heatwaves, Respondent must immediately comply with its CO₂ legislation and pursue efforts to meet the 1.5°C limit. Each additional tonne of CO₂ contributes to hazardous climate change, and the Applicants are already affected at current levels of warming. The result of the domestic proceedings affects the very substance of their right to life.⁸³ Respondent's continued failures expose the Applicants to a serious and specific danger.⁸⁴
- 45 The Applicants, therefore, meet applicability requirements. Yet, *none of the courts analysed critical questions on the merits*: not those related to the Applicants' vulnerability to extreme heatwaves; not the harm from heat-related afflictions suffered by Applicants 2–5 and not the legislative and administrative framework necessary to effectively protect the Applicants' right

⁷⁹ See FSC, paras. 6.1. and 6.2 (*doc. 19 p. 148 f.*).

⁸⁰ Art. 10 (1) Cst. entails a positive obligation to protect similarly to Art. 2 and 8 ECHR.

⁸¹ See, *inter alia*, *Mennitto v. Italy* [GC], no. 33804/96, § 23.

⁸² See *Boulois v. Luxembourg* [GC], no. 37575/04, § 90.

⁸³ See *Bodén v. Sweden*, no. 10930/84, § 32.

⁸⁴ Contrast *Balmer-Schafroth and Others v. Switzerland*, no. 22110/93, § 40.

to life and family and private life. The courts applied standing requirements *arbitrarily*, impairing the essence of those rights and disproportionate to the duty to take into account the nature of the rights the Applicants seek to protect (Arts. 2 & 8 ECHR). The courts' arbitrary application of standing requirements is also inconsistent with Respondent's commitments under the Aarhus Convention.

- 46 Indeed, DETEC refused to address the substance of the request based on its interpretation of the standing requirements of Art. 25a APA. The FAC and the FSC upheld this refusal (section 1.7). The assessment of the FAC that the Applicants were not “particularly” affected in comparison to the general public is contrary to best available scientific evidence (para. 4 f.).
- 47 Although the FSC did not adopt the FAC’s assessment that the Applicants were not “particularly” affected, it came up with a *new arbitrary argument*.⁸⁵ The FSC found that there was still time to combat dangerous climate change; therefore an arguable claim of right did not exist under Art. 10 (1) Cst. (doc. 19, para. 6.2 in connection with para. 5.4), or under Art. 2 and 8 ECHR. Scientific evidence (section 1.8) indicates that states must reduce emissions now to prevent the worst impacts and avoid dangerous climate change. The FSC’s conclusion is “striking and palpable on the face of [such evidence].”⁸⁶ Also, the FSC’s decision that there is still time for Respondent to start acting is legally wrong. It implies that the only appropriate time for the Applicants to bring the legal challenge would be at a moment when it is too late to redress the harm.⁸⁷ Environmental risks have to be addressed before they materialize,⁸⁸ due to “the limitations inherent in the very mechanism of reparation of this type of damage.”⁸⁹ The FSC’s decision is also legally wrong as it implies that Respondent’s duty of care threshold under Art. 2 and 8 ECHR is based on the time left to achieve a global target, instead of evaluating whether there is a “real and serious” risk for the Applicants.

⁸⁵ See *Nejdet Şahin and Perihan Şahin v. Turkey*, no. 13279/05, § 50.

⁸⁶ Cf. *Khamidov v. Russia*, no. 72118/01, § 174, see also *Dulaurans v. France*, no. 34553/97, §§ 33-39.

⁸⁷ Cf. *Howald Moor and Others v Switzerland*, no. 52067/10, §§ 74 ff.; see REICH, Bundesgericht, I. öffentlich-rechtliche Abteilung, 1C_37/2019, 5. Mai 2020, in ZBl 121/2020, 489-507, section 2.1.3.

⁸⁸ See *Tătar* (n 71), § 120; see also *Urgenda* (n 69), para. 7.2.10.

⁸⁹ International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1. C. J. Reports 1997, p. 7, § 140.

48 As a result, Respondent violated Art. 6 ECHR because its courts failed to adequately examine the merits of the Applicants' allegations.

3.2. Violation of Art. 2 and 8 ECHR

49 The FSC arbitrarily and incidentally considered that the Applicants' rights "are not violated" (doc. 19 para. 7).⁹⁰ The FSC reasoning, in obiter dictum, wrongly asserted that global warming would reach 1.5°C around the year 2040, and the limit of "well below 2°C" would be achieved even later. The FSC wrongly claimed that there would still be enough time to prevent global warming exceeding this limit (para. 5.3 and 5.4).

50 Art. 2 and 8 ECHR overlap in environmental matters,⁹¹ and impose a *positive obligation* on Respondent to put in place a legislative and administrative framework to provide *effective protection* against threats to the right to life and to the right to respect for private life, respectively.⁹² "Necessary"⁹³ and "appropriate"⁹⁴ measures have to be adopted to prevent or minimise the risk of environmental harm-

51 The risks climate change imposes to the Applicants' health and private and family life due to extreme heatwaves, as shown above (sections 1.1 and 1.2), are certainly comparable to, and probably greater than, those in the environmental cases affirmed by the ECtHR.⁹⁵ In view of the magnitude of the risks climate change imposes, the clear science, the urgency of the situation and the *clear ultimate objective* of the UNFCCC (para. 15), this case differs from other environmental harm cases, and this implies that Respondent has to take *all measures that are not impossible* or disproportionately economically burdensome with the objective of reducing

⁹⁰ See mutatis mutandis *Mutu and Pechstein v. Switzerland*, no. 40575/10, § 182.

⁹¹ *Öneryıldız v. Turkey* [GC] no. 48939/99, § 90; *Budayeva and Others v. Russia*, no. 15339/02, § 133.

⁹² E.g., *Öneryıldız* (n 91), §§ 89-90; *Budayeva* (n 91), § 129.

⁹³ See e.g. *Öneryıldız* (n 91), § 101; *Cordella* (n 58), § 173.

⁹⁴ See e.g. *Budayeva* (n 91), § 128; *Kolyadenko v Russia*, no. 17423/05, § 212; *Taşkin and Others v. Turkey*, no. 46117/99, § 113; *Tâtar* (n 71), § 97.

⁹⁵ *Deés v. Hungary*, no. 2345/06; *Grimkovskaya* (n 57); *Bor v. Hungary*, no. 50474/08; *Fadeyeva* (n 57); *Moreno Gómez v. Spain*, no. 4143/02; *Guerra and Others*, no. 14967/89; *Dzemyuk v. Ukraine*, no. 42488/02; *Brincat and Others v. Malta*, no. 60908/11; *López Ostra v. Spain*, no. 16798/90; *Giacomelli v. Italy*, no. 59909/00; *Brânduse v. Romania*, no. 6586/03; *Di Sarno* (n 71).

GHG to a safe level.⁹⁶ It requires Respondent to “do everything in [its] power”.⁹⁷ The onus lies on the Respondent.⁹⁸

- 52 Art. 2 ECHR works *preventively*, contrary to the FSC’s erroneous decision, and does not require death to occur.⁹⁹ Art. 2 ECHR covers risks to life “which by their very nature are dangerous,”¹⁰⁰ such as the serious threat posed to the Applicants’ lives by climate change. Protection does not have to be exclusively for the benefit of specific persons who are known in advance to be at risk, and the positive obligation may additionally lead to a “general protection to society.”¹⁰¹
- 53 Art. 8 ECHR applies to cases of environmental degradation associated with adverse effects to health, physical integrity or private life.¹⁰² The serious threat to the Applicants’ well-being and quality of life posed by dangerous climate change suffices to trigger positive obligations under Art. 8(1) ECHR; this would even be so if their state of health had not deteriorated or had not been seriously endangered.¹⁰³ Art. 8 ECHR also relates to the right of the Applicants to personal autonomy and “ageing in dignity”.¹⁰⁴
- 54 The *real and serious risk*¹⁰⁵ to the Applicants’ rights should be assessed taking due account of the context of climate change. The recurring heatwaves¹⁰⁶ in the last years have already led to heat-related excess mortality and morbidity (sections 1.1 and 1.2); there is evidence of the seriousness of the risk presented to the Applicants by ongoing climate change and proof that the Applicants have already been harmed.¹⁰⁷ Also, Applicants 2–4 present medical evidence that connects their current health conditions to heatwaves, making their circumstances arguably more compelling than those in *Fadeyeva v.*

⁹⁶ See VOIGT, The climate dimension of human rights obligations, Conference: Human rights for the planet (ECHR and COE), 5 Oct. 2020, p. 4.

⁹⁷ *Kolyadenko* (n 94), §§ 191, 216.

⁹⁸ See *Fadeyeva* (n 57), §§ 128-130, 133; *Jugheli and Others v. Georgia*, no. 38342, § 76; *Dubetska and others v. Ukraine*, no. 30499/03, § 155; *Cordella* (n 58), § 161; *Oneryildiz* (n 91), § 89; *Budayeva* (n 91), § 132; *Brincat* (n 95), § 110. The Dutch Supreme Court adopted this approach in *Urgenda* (n 69), para. 5.3.3.

⁹⁹ *Oneryildiz* (n 91), §§ 71, 89-90.

¹⁰⁰ See *Oneryildiz* (n 91) § 71; *Budayeva* (n 91), §§ 130-131.

¹⁰¹ *Maiorano and Others vs. Italy*, no. 28634/06, § 107; *Gorovenky and Bugara v. Ukraine*, no. 36146/05, § 32.

¹⁰² *Fadeyeva* (n 57), § 68; *Kyrtatos v. Greece*, no. 41666/98, § 52; *Dubetska* (n 98), § 105.

¹⁰³ See *Taşkin* (n 94), § 113. See also *Tâtar* (n 71), § 97; *Jugheli* (n 98), § 71; *Brândușe v. Romania*, no. 6586/03, § 67.

¹⁰⁴ *Koch v. Germany*, no. 497/09; see UN Secretary-General in Resolution A/66/173, 2011, § 7.

¹⁰⁵ *Tâtar* (n 71), § 107; *Brincat* (n 95), § 82; *Jugheli* (n 98), § 67; *Cordella* (n 58), § 169.

¹⁰⁶ *Mutatis mutandis*, *Talpis v. Italy*, no. 41237/14, § 122.

¹⁰⁷ Compare *Oneryildiz* (n 91), § 100; see also *Budayeva* (n 91), § 132.

Russia.¹⁰⁸ In *Taşkin and Others v. Turkey*, the Court dismissed the government's defence that the risks would only emerge in 20 to 50 years.¹⁰⁹ In the present case, science shows that warming of 2°C or more, as opposed to 1.5°C, would substantially increase heat-related mortality and morbidity (sections 1.3 and 1.5).¹¹⁰ As older women, the Applicants were and are at significant risk of such temperature-related morbidity and mortality. Even before the “well below 2°C” limit is reached, “tipping points” may result in abrupt and irreversible climate impacts (para. 31).¹¹¹ That climate change deteriorates and threatens the Applicants' health and life is thus established “beyond reasonable doubt”,¹¹² a threshold that should not be confused with the much more stringent scientific proof of about 95%.¹¹³

- 55 Respondent *knows* about the real and serious risk of harm posed by dangerous climate change, including extreme heatwaves, to the Applicants (section 1.1).¹¹⁴ As part of the UNFCCC and the Paris Agreement, and having endorsed the IPCC's findings (para. 14 ff.), Respondent knows about the projected severe impacts of the warming of 1.5°C or above on the life and health of the Applicants (section 1.5).¹¹⁵
- 56 The *scope of Respondent's obligation to protect* derives notably from the following, as the Court regularly considers environmental standards and principles as well as international law when determining the obligation to protect under Convention rights:
- *International law* is an important source because the Convention cannot be interpreted in a vacuum.¹¹⁶ Switzerland's legal obligations under the Paris Agreement obligate it to do its share to limit the increase in the global average temperature to “well below 2°C” and to “pursue efforts to limit the temperature increase to 1.5°C” (Art. 2(1)a). Switzerland, as a developed

¹⁰⁸ Contrast *Fadeyeva* (n 57), § 80.

¹⁰⁹ See *Taşkin* (n 94), §§ 107 and 113.

¹¹⁰ *Fadeyeva* (n 57), §§ 85-88; see also *Cordella* (n 58), §§ 163-167.

¹¹¹ See *Urgenda* (n 69), paras. 4.2, 4.4.

¹¹² See e.g. *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, § 61.

¹¹³ See SHELTON, “Complexities and Uncertainties in Matters of Human Rights and the Environment,” in *Human Right to a Healthy Environment*, John H. Knox and Ramin Pejman (eds), Cambridge University Press 2018, 109.

¹¹⁴ See also *López Ostra* (n 95), §§ 9, 11, 52, 53; *Öneryıldız* (n 91), §§ 100 f., 109 f.; *Fadeyeva* (n 57), § 90; *Budayeva* (n 91), §§ 147 f.; *Brincat* (n 95), § 106; *Jugheli* (n 98), § 77.

¹¹⁵ See *López Ostra* (n 95), § 53; *Budayeva* (n 91), § 148; *Kolyadenko* (n 94), §§ 165, 176; *Brincat* (n 95), §§ 105, 106.

¹¹⁶ See *Al Adsani v. The United Kingdom*, no. 35763/97, § 55; *Demir and Baykara v. Turkey*, no. 345039, § 85.

country, has to “take the lead” and reduce its emissions with its “highest possible ambition” as its fair share of the global effort (Art. 4(3) and 4(4) Paris Agreement).

- The *precautionary principle*¹¹⁷, including the prevention principle: The UNFCCC stipulated already in 1992 that the causes of climate change have to be *prevented* or minimised, and that where there is a threat of serious or irreversible damage, *lack of scientific evidence should not be used as a reason for postponing measures*.¹¹⁸ The precautionary principle thus entails the elements of “prevention” and “precaution”.¹¹⁹ It *covers the full range of preventive measures, whether taken under scientific uncertainty or not*.¹²⁰ There is a global consensus that *climate change and its adverse effects* are no longer a matter of uncertainty but of acknowledged risks.¹²¹ And the principle also applies if the *actual materialization* of the risk to the Applicants’ life and health would be deemed to be uncertain.¹²² Respondent must prevent future harms to the Applicants.¹²³ To that regard, *taking the risk of non-compliance with the limits of 1.5°C and “well below 2°C” is impermissible*.¹²⁴
- *Best available science*.¹²⁵ The IPCC reports, as well as epidemiological data, establish the serious current and future impacts of climate change on human health and mortality including the significant risks of delay in reducing GHG emissions for older women (section 1.1, section 1.5); and the action required of Respondent to do its fair share and mitigate the risks of harm (see section 1.3). These reports represent “best available science” and must be taken into account.

¹¹⁷ See *Tătar* (n 71), § 120; see also *Urgenda* (n 69), para. 7.2.10.

¹¹⁸ Art. 3(3) UNFCCC.

¹¹⁹ See also request, para. 116 (*doc. 14 p. 118*).

¹²⁰ TROUWBORST, Prevention, Precaution, Logic and Law, Erasmus Law Review, Volume 02 Issue 02, 2009, p. 124.

¹²¹ See VIÑUALES, The Paris Climate Agreement: An Initial Examination (Part I of III) Feb. 2016, available at <https://www.ejiltalk.org/the-paris-climate-agreement-an-initial-examination-part-i-of-ii/>.

¹²² See *Urgenda* (n 69), para. 5.3.2.

¹²³ See LESLIE-ANNE DUVIC-PAOLI, The Prevention Principle in International Environmental Law, 2018, at pp. 269 and 190-191: "It is precisely when harm is foreseeable but has not yet occurred that the obligation of prevention is most relevant. (...) The boundaries of the anticipatory rationale of prevention are not defined within an explicit timeframe, but it can be considered that prevention operates in the realm of 'imminence.' (...) In the climate regime, the 'near future' spans over the full twenty-first century, the time span covered by climate science and modelling. Climate change is thus considered an imminent threat irrespective of the fact that some damage might only materialize in several decades"

¹²⁴ See in detail request, paras. 119-121 (*doc. 14 p. 119 f.*).

¹²⁵ See *Rees v. UK*, no. 9532/81, § 47; *Cossey v. UK*, no. 10843/84, § 40 and *Fretté v France*, no. 36515, § 42.

- *Evolving norms of national and international law*¹²⁶ and “*consensus* emerging from specialized international instruments and from the practice of the Contracting States,”¹²⁷ see para. 40. In 2019, the UN Committee on Economic, Social and Cultural Rights (CESCR) also recommended that Switzerland raise its target for 2030 “so that it is consistent with the commitment to limit temperature rise to 1.5°C.”¹²⁸ Switzerland is also a party to CEDAW, which recommends that “States parties should ensure that climate change and disaster risk-reduction measures are gender-responsive and sensitive to the needs and vulnerabilities of older women.”¹²⁹
- 57 Thus, to comply with its positive obligation to put in place all necessary measures to protect the Applicants effectively,¹³⁰ Respondent *must do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels*. Respondent must also establish a corresponding legislative and administrative framework.¹³¹ However, as shown above, with its current and planned climate targets and measures (see sections 1.3 and 1.4), this is not the case. Instead, its current and planned reduction targets do not even achieve the outdated 2020 target, let alone that which is required to protect the Applicants (section 1.3). Thus, *Respondent has failed to protect the Applicants effectively*. The necessary measures to mitigate the risk of heatwaves have not been taken “in good time” and are ineffective.¹³² Instead, Respondent’s approach is marked by delays and insufficient enforcement.¹³³
- 58 Respondent’s *margin of appreciation* is limited as it is an issue of compliance with international standards recognised by Respondent¹³⁴ and violation of fundamental rights such as under Art. 2 ECHR are at stake. The urgency of the situation and the risk of irreversible harm also points to a very narrow approach to Respondent’s margin of appreciation. Respondent’s margin of appreciation is limited to determining the *measures* with which to fulfil its

¹²⁶ *Demir* (n 116), § 68.

¹²⁷ *Demir* (n 116), § 85.

¹²⁸ CESCR, Concluding observations on the fourth periodic report of Switzerland, E/C.12/CHE/CO/4, § 19 (*doc. 51 p. 798*).

¹²⁹ CEDAW (n 63), § 35 (*p. 796*).

¹³⁰ See *Cordella* (n 58), § 173.

¹³¹ See *Öneryıldız* (n 91), §§ 89–90.

¹³² Cf. *Dubetska* (n 98), § 143.

¹³³ *Ibid.*, § 151.

¹³⁴ See *Bor* (n 95), §§ 24, 27.

duty to protect. There is *no discretion* as to the level of ambition, namely to do its share to stay within the 1.5°C limit.¹³⁵

- 59 Respondent is continuously violating the Applicants' rights under Art. 2 and 8 ECHR. Respondent fails to adopt the necessary measures to effectively protect the Applicants from the risk of harm posed by dangerous climate change.

3.3. Violation of Art. 13 taken together with Art. 2 and 8 ECHR

- 60 The Applicants' claim is "arguable" in terms of Art. 13 since they are victims of Convention violations (see section 2).¹³⁶ However, DETEC refused to enter into the matter based on Art. 25a APA, still less to undertake a substantive review of Art. 2 and 8 ECHR (see para. 26). The courts upheld DETEC's refusal (para. 27 and 28). The FSC's incidental statement that Art. 2 and 8 ECHR were not violated does not remedy the domestic courts' failure to undertake a substantive review (doc. 19, para. 7). In doing so, the FSC disregarded the fact that the duty to protect is a *preventive* one (see also para. 52). The Respondent Government's and domestic courts' excessive focus on whether the Applicants are "particularly affected" or affected "with sufficient intensity" in the rights invoked in terms of Art. 25a APA rendered the remedy ineffective.¹³⁷
- 61 Furthermore, the remedy was ineffective concerning the relevant period.¹³⁸ The time to reduce emissions for 2020 and 2030 in line with both the "well below 2°C" and the 1.5°C limit is *now*. If an effective remedy is only granted when global warming approaches 2°C, as it appears to be the FSC's approach, then in that case, it will be too late for Respondent to do its share to stay within the 1.5°C or "well below 2°C", or for the Applicants 2–5 as older women to benefit from these protections.
- 62 Thus, the Applicants' right to an effective remedy was violated, since no national authority examined the substance of their complaint.¹³⁹

¹³⁵ See *Fadeyeva* (n 57), §§ 124-134; see VOIGT (n 96), p. 4.

¹³⁶ See *Leander v. Sweden*, no. 9248/81, § 77.

¹³⁷ Cf. *Camenzind v. Switzerland*, no. 21353/93, § 54; *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, no. 14134/02, § 69

¹³⁸ Cf. *Khider v. France*, no. 39364/05, §§ 142–145.

¹³⁹ See i.a. *Smith and Grady v. the United Kingdom*, no. 33985/96, §§ 135-138; *Boychev and Others v. Bulgaria*, no. 77185/01, § 56.