EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Violations of the European Convention for failing to implement sufficient measures to combat climate change

In today's **Grand Chamber** judgment[1] in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (application no. 53600/20) the European Court of Human Rights held, by a majority of sixteen votes to one, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights;

and, unanimously, that there had been:

a violation of Article 6 § 1 (access to court).

The case concerned a complaint by four women and a Swiss association, Verein KlimaSeniorinnen Schweiz, whose members are all older women concerned about the consequences of global warming on their living conditions and health. They consider that the Swiss authorities are not taking sufficient action, despite their duties under the Convention, to mitigate the effects of climate change.

The Court found that Article 8 of the Convention encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.

However, it held that the four individual applicants did not fulfil the victim-status criteria under Article 34 of the Convention and declared their complaints inadmissible. The applicant association, in contrast, had the right (*locus standi*) to bring a complaint regarding the threats arising from climate change in the respondent State on behalf of those individuals who could arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention.

The Court found that the Swiss Confederation had failed to comply with its duties ("positive obligations") under the Convention concerning climate change. There had been critical gaps in the process of putting in place the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national greenhouse gas (GHG) emissions limitations. Switzerland had also failed to meet its past GHG emission reduction targets. While recognising that national authorities enjoy wide discretion in relation to implementation of legislation and measures, the Court held, on the basis of the material before it, that the Swiss authorities had not acted in time and in an appropriate way to devise, develop and implement relevant legislation and measures in this case.

In addition, the Court found that Article 6 § 1 of the Convention applied to the applicant association's complaint concerning effective implementation of the mitigation measures under existing domestic law. The Court held that the Swiss courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the applicant association's complaints. They had failed to take into consideration the compelling scientific evidence concerning climate change and had not taken the complaints seriously.

For further information, please see these Questions and Answers on the three Grand Chamber cases

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

concerning climate change.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are, on the one hand, Verein KlimaSeniorinnen Schweiz, an association under Swiss law established to promote and implement effective climate protection on behalf of its members, who are more than 2,000 older women (one-third of whom are over 75) and, on the other, four women, all members of the association and aged over 80, who complain of health problems that are exacerbated during heatwaves, significantly affecting their lives, living conditions and well-being. The eldest of the four, who was born in 1931, died during the proceedings before the Court.

On 25 November 2016, under section 25a of the Federal Law on administrative procedure, the applicants submitted a request to the Federal Council and other Swiss environmental and energy authorities, pointing to various failings in the area of climate protection and seeking a decision on actions to be taken (*Realakte*). They also called on the authorities to take the necessary measures to meet the 2030 goal set by the Paris climate agreement in 2015.

In a decision of 25 April 2017, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) declared the request inadmissible, finding that the applicants were pursuing general-public interests and were not directly affected in terms of their rights and could therefore not be regarded as victims. In addition, in the DETEC's view, the general purpose of the applicants' request was to achieve a reduction in CO_2 emissions worldwide and not only in their immediate surroundings.

On 27 November 2018 the Federal Administrative Court dismissed an appeal by the applicants, finding that women over 75 were not the only population group affected by climate change. It considered that they had not shown that their rights had been affected in a different way to those of the general population.

In a judgment of 5 May 2020, the Federal Supreme Court dismissed an appeal dated 21 January 2019, finding that the individual applicants were not sufficiently and directly affected by the alleged failings in terms of their right to life under Article 10 § 1 of the Constitution (Article 2 of the European Convention), or their right to respect for private and family life, including respect for their home (Article 8), in order to assert an interest worthy of protection within the meaning of section 25a of the Federal Law on administrative procedure. As regards the applicant association, the Federal Supreme Court, given its finding with respect to the individual applicants, left open whether it had standing to lodge the appeal at all.

Complaints, procedure and composition of the Court

The applicants complained of various failures by the Swiss authorities to mitigate the effects of climate change – and in particular the effect of global warming – which they claimed adversely affects their lives, living conditions and health. They complained that the Swiss Confederation had failed to fulfil its duties under the Convention to protect life effectively (Article 2) and to ensure respect for their private and family life, including their home (Article 8). In this context they complained that the State had failed to introduce suitable legislation and to put appropriate and sufficient measures in place to attain the targets for combating climate change, in line with its international commitments.

They further complained that they had not had access to a court within the meaning of Article 6 § 1 of the Convention, alleging that the domestic courts had not properly responded to their requests and had given arbitrary decisions affecting their civil rights as concerned the State's failure to take the necessary action to tackle the adverse effects of climate change.

Lastly, the applicants complained of a violation of Article 13 (right to an effective remedy), arguing that no effective domestic remedy had been available to them for the purpose of submitting their complaints under Articles 2 and 8.

The application was lodged with the European Court of Human Rights on 26 November 2020.

On 17 March 2021 the Swiss Government was given notice of the application, with questions from the Court. At the same time, the Chamber decided to grant the case priority under Rule 41 of the Rules of the Court.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 26 April 2022. The President of the Court decided that, in the interests of the proper administration of justice, the case should be assigned to the same composition of the Grand Chamber as *Carême v. France* (application no. 7189/21) and *Duarte Agostinho and Others v. Portugal and 32 Others* (no. 39371/20), both of which had also been relinquished to the Grand Chamber.

The Governments of Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania, and Slovakia intervened in the written proceedings as third parties, in addition to the people/entities listed in the endnote[1].

The Government of Ireland and the European Network of National Human Rights Institutions (ENNHRI) were granted leave to intervene orally in the proceedings as third parties.

A public hearing was held on 29 March 2023.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Darian **Pavli** (Albania),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Ana Maria **Guerra Martins** (Portugal),
Mattias **Guyomar** (France),
Andreas **Zünd** (Switzerland),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Court began by noting that it could deal with the issues arising from climate change only within the limits of the exercise of its competence under Article 19 (Establishment of the Court) of the Convention, which is to ensure the observance of the engagements undertaken by the High Contracting Parties to the Convention and its Protocols. At the same time, it kept in mind that inadequate State action to combat climate change exacerbated the risks of harmful consequences and subsequent threats for the enjoyment of human rights – threats already recognised by governments worldwide. The current situation therefore involved compelling present-day

conditions, confirmed by scientific knowledge, which the Court could not ignore in its role as a judicial body tasked with the enforcement of human rights.

The Court found it to be a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of this and capable of taking measures to address it effectively, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5ºC above pre-industrial levels and if action is taken urgently. It noted that current global mitigation efforts are not sufficient to meet that target. It also noted that, while the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change.

Against this background, the Court proceeded by examining the individual applicants' victim status, the applicant association's right to submit a case to a court of law (*locus standi*) and the applicability of Articles 2 and 8 of the Convention.

In order to claim victim status under Article 34 of the Convention in the context of complaints concerning climate change, the Court held that individual applicants need to show that they are personally and directly affected by governmental action or inaction. This depends on two key criteria: (a) high intensity of exposure of the applicant to the adverse effects of climate change, and (b) a pressing need to ensure the applicant's individual protection. The Court emphasised that the threshold for establishing victim status in climate change cases is especially high, the Convention not admitting general public-interest complaints (*actio popularis*). Having carefully considered the nature and scope of the individual applicants' complaints and the material submitted by them, the degree of likelihood and/or probability of the adverse effects of climate change in time, the specific impact on each individual applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability, the Court found that the four individual applicants did not fulfil the victim-status criteria under Article 34 of the Convention. It therefore declared their complaints inadmissible.

As regards the standing of associations, the Court held that the special feature of climate change as a common concern of humankind and the need to promote intergenerational burden-sharing rendered it appropriate to make allowance for recourse to legal action by associations in the context of climate change. The exclusion of general public-interest complaints (*actio popularis*) under the Convention requires, however, that, in order for the applicant association to have the right to act on behalf of individuals and to lodge an application on account of the alleged failure of a State to take adequate measures to protect them from the harmful effects of climate change on their lives and health, it must comply with a number of conditions outlined in the judgment. The right of an association to act on behalf of its members or other affected individuals within the jurisdiction concerned is not subject to a separate requirement that those on whose behalf the case has been brought would themselves meet the victim-status requirements for individuals.

In the circumstances of the present case, the Court found that the applicant association fulfilled the relevant criteria and had the necessary standing to act on behalf of its members in this case. It also held that Article 8 was applicable to its complaint.

Article 2

In view of its finding that Article 8 applied to the applicant association's complaint, the Court decided not to examine the case from the angle of Article 2. It noted, however, that the principles developed under that Article are, to a very large extent, similar to those developed under Article 8.

Article 8

The Court found that Article 8 of the Convention encompasses a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life.

In this context, a contracting State's main duty is to adopt, and to apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied so as to guarantee rights that are practical and effective. The Court stressed that it is only competent to interpret the provisions of the Convention and its Protocols. However, it noted that in line with the international commitments undertaken by the member States, most notably under the United Nations Framework Convention on Climate Change (UNFCCC) and the 2015 Paris climate agreement, and in the light of the compelling scientific advice provided, in particular, by the Intergovernmental Panel on Climate Change (IPCC), States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights under Article 8. Effective respect for those rights requires States to undertake measures to reduce their GHG emission levels, with a view to reaching net neutrality, in principle within the next three decades. In this respect, States need to put in place relevant targets and timelines, which must form an integral part of the domestic regulatory framework, as a basis for mitigation measures.

As regards the applicant association's complaint in relation to Switzerland, the Court found that there had been critical gaps in the process of putting in place the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national greenhouse gas (GHG) emissions limitations. Furthermore, the Court noted that Switzerland had previously failed to meet its past GHG emission reduction targets. The Swiss authorities had not acted in time and in an appropriate way to devise and implement the relevant legislation and measures in accordance with their positive obligations pursuant to Article 8 of the Convention, which were of relevance in the context of climate change.

The Swiss Confederation had therefore exceeded its discretion ("margin of appreciation") and had failed to comply with its duties in this respect. There had therefore been a violation of Article 8 of the Convention.

Article 6

The Court held that Article 6 § 1 of the Convention applied to the applicant association's complaint, in so far as it concerned effective implementation of the mitigation measures under existing law, reiterating the particular relevance of collective action in the context of climate change. The applicant association had victim status under that provision, whereas, for similar reasons to those in the assessment under Article 8, the individual applicants did not.

The Court accepted that the decisions of the domestic courts had sought to distinguish the issue of individual protection from general public-interest complaints (*actio popularis*), as only the protection of individual rights were guaranteed under section 25a of the Federal Law on administrative procedure. However, the Court found that the rejection of the applicant association's legal action, first by an administrative authority, DETEC, and then by the national courts at two levels of jurisdiction, amounted to an interference with their right of access to a court.

The Court found that the national courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the complaints. They had failed to take into

consideration the compelling scientific evidence concerning climate change and had not taken the association's complaints seriously. As there had been no further legal avenues or safeguards available to the applicant association, or individual applicants/members of the association, the Court found that there had been a violation of Article 6 § 1 of the Convention.

The Court considered it essential to emphasise the key role which domestic courts play in climate-change litigation; a fact reflected in the case-law adopted to date in certain Council of Europe member States. It highlighted the importance of access to justice in this field. Furthermore, given the principles of shared responsibility and subsidiarity, it fell primarily to national authorities, including the courts, to ensure that Convention obligations are observed.

Article 13

Given its findings under Article 6 § 1 of the Convention, the Court did not find it necessary to examine the applicant association's complaint separately under Article 13 of the Convention.

Article 46 (binding force and execution of judgments)

When the Court finds a breach of the Convention, the State has a legal obligation to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the situation. In certain cases, the Court has found it useful to indicate the type of measure – individual and/or general – that might be taken to put an end to the situation which has given rise to the finding of a violation.

In this case, in the light of the complexity and the nature of the issues involved, the Court found that it could not be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the present judgment. Given the discretion accorded the State in this area, it considered that the Swiss Confederation, with the assistance of the Committee of Ministers, was better placed to assess the specific measures to be taken. It thus left it to the Committee of Ministers to supervise, on the basis of the information provided by the State, the adoption of measures aimed at ensuring that the national authorities comply with Convention requirements, as clarified in this judgment.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant association 80,000 euros (EUR) in respect of costs and expenses. As no claim had been submitted for damages, no sum was awarded on that account.

Separate opinion

Judge Eicke expressed a partly dissenting and partly concurring opinion. This opinion is annexed to the judgment.

The judgment is available in English and in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[1] The United Nations High Commissioner for Human Rights, the United Nations Special Rapporteurs on toxics and human rights, and on human rights and the environment, and the Independent Expert on the enjoyment of all human rights by older persons; the International Commission of Jurists (ICJ) and the ICJ Swiss Section (ICJ-CH); the European Network of National Human Rights Institutions (ENNHRI); the coordinated submission of the International Network for Economic, Social and Cultural Rights (ESCR-Net); the Human Rights Centre of Ghent University; Professors Evelyne Schmid and Véronique Boillet (University of Lausanne); Professors Sonia I. Seneviratne and Andreas Fischlin (Swiss Federal Institute of Technology Zurich); Global Justice Clinic; the Climate Litigation Accelerator and Professor Christina Voigt (University of Olso); ClientEarth; Our Children's Trust; Oxfam France and Oxfam International and its affiliates (Oxfam); a group of academics from the University of Bern (Professors Claus Beisbart, Thomas Frölicher, Martin Grosjean, Karin Ingold, Fortunat Joos, Jörg Künzli, C. Christoph Raible, Thomas Stocker, Ralph Winkler and Judith Wyttenbach, and Doctors Ana M. Vicedo-Cabrera and Charlotte Blattner); the Center for International Environmental Law (CIEL) and Dr Margaretha Wewerinke-Singh; the Sabin Center for Climate Change Law at Columbia Law School; and Germanwatch; Greenpeace Germany, and Scientists for Future.