

Case number: 311.6-2797/6/1  
Your reference: ECHR-LE4.1iG OBS IMSI CHB DAR/elf  
Our reference: F.2021/3  
Bern, 16 July 2021

**Application no. 53600/20 – Verein KlimaSeniorinnen Schweiz et al. v. Switzerland**  
**Comments of the Swiss Government on admissibility and the merits**

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Madame,

By letter dated 25 March 2021, you informed us that the above-referenced application is pending before the European Court of Human Rights (hereinafter: the Court). You have invited us to submit a written statement of the facts as well as our comments on the admissibility and the merits of this application by the deadline of 16 July 2021.

We are invited to answer the following questions:

1. *Can the Applicant association (first Applicant) and the Applicants nos 2 to 5 (natural persons) be considered actual or potential victims, within the meaning of Article 34 of the Convention as interpreted by the Court, of a violation of one of the Convention rights invoked in this case due to the failure of the Swiss authorities to effectively protect them from the effects of global warming?*  
*In particular, have the Applicants suffered, directly or indirectly and seriously, the alleged consequences of insufficient action or inaction by the Respondent State?*
2. *If question no. 1 is answered in the affirmative, has there been a violation of Articles 2 and 8 of the Convention in this case?*
  - 2.1. *Were these provisions applicable to the case at hand?*

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- 2.2. *Has the Respondent State failed to fulfil its positive obligations to effectively protect life (Article 2) and/or to respect the Applicants' private and family life, including their home (Article 8)?*
- 2.3. *In particular, given its margin of appreciation in environmental matters, has the Respondent State fulfilled its obligations under the Convention guarantees being relied upon here, read in the light of the relevant provisions and principles, such as the principles of precaution and intergenerational equity, which are contained in international environmental law? In this context, has it adopted appropriate regulations and implemented them by means of adequate and sufficient measures to achieve the targets for combating global warming (see, for example, *Tătar v. Romania*, no. 67021/01, para. 109 and 120, 27 January 2009, and *Greenpeace E.V. et al. v. Germany* (decision), no. 18215/06, 19 May 2009)?*
3. *Has there been a violation of the right of access to an impartial tribunal within the meaning of Article 6 of the Convention?*
  - 3.1. *Is this provision applicable in the civil context?*
  - 3.2. *Did the Applicants have effective legal remedies at their disposal to assert their civil rights (see, for example, *Naït-Liman v. Switzerland [GC]*, no. 51357/07, para. 113, 15 March 2018)?*
4. *Did the Applicants have an effective remedy at their disposal within the meaning of Article 13 of the Convention concerning the alleged violations of Articles 2 and 8?*

Within the time limit set by the Court, the Government of Switzerland hereby submits its comments as follows:

## **I. Preliminary comments**

1. Global warming is a global phenomenon, which undoubtedly represents one of the greatest challenges to mankind. Its effects are already being felt in many parts of the world and will be more noticeable in the coming years and decades. Given the seriousness of the current situation and the worrying prospects for the future, there is a real urgency to the need to adopt and implement a series of effective measures to combat this phenomenon and to minimise its effects. Only resolute action by all states, combined with changes in behaviour by private actors and by all citizens, will enable us to find lasting solutions to this immense challenge.
2. Switzerland has long recognised the importance of the problem of global warming and has committed itself to combatting it at different levels and in different ways. As an Alpine country, Switzerland is particularly affected by climate change. Through a complete revision of the CO<sub>2</sub> Act, which aimed at reducing emissions by at least 50% by 2030 relative to 1990 levels, the Swiss Federal Council and Parliament showed their determination to reduce greenhouse gas emissions in Switzerland. However, the Swiss people, who were called upon to vote in a referendum on the draft revision on 13 June 2021, rejected it by a small majority.<sup>1</sup> The current CO<sub>2</sub> Act therefore remains in force until it is amended in future. However, the rejection of this revision is not a 'no' to climate protection.

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<sup>1</sup> Referendum of 13 June 2021, [CO<sub>2</sub> Act \(admin.ch\)](#)

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The debates prior to the referendum and the analysis of the motives of the voters clearly showed that a large proportion of the population and society want to combat global warming, but not necessarily with the tools provided for in this legislative revision. The Federal Council has understood this message and will discuss the new options with all stakeholders, knowing that it must act swiftly.<sup>2</sup>

3. The Swiss Government is aware that, in any democratic society, it is perfectly legitimate for members of the public to call on states to do more to combat global warming or for criticism to be directed at authorities suspected of inaction in this area. This can only enrich the debate, help to find solutions and, ultimately, lead authorities towards identifying the best balance in defining the measures to be taken. However, the Convention system, the cornerstone of which is the right of individual application, is not intended to become the place where national policies to combat global warming are decided, in accordance with the principle of subsidiarity which will be introduced into the preamble of the Convention following the entry into force on 1 August 2021 of Article 1 of Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS no. 213). It is the responsibility of the government, the national parliaments and the Swiss people to define and choose the measures to be taken.
4. The Swiss political system, with its democratic mechanisms, offers sufficient options for accommodating such demands. A “legalisation” of these processes, in which decisions of an international court would prescribe higher targets or stronger measures for the government, parliament or even the Swiss people in the context of a referendum, as was the case with the complete revision of the CO<sub>2</sub> Act, could only create tensions from the perspective of the separation of powers and the principle of subsidiarity. It would also run the risk of circumventing the democratic debate and complicating the search for politically acceptable solutions. Finally, it should be recognised that the Court is not intended to act as the supreme court of environmental or climate disputes and is not competent to enforce compliance with international treaties or obligations other than the Convention.
5. Moreover, the present case, by its very nature, is not suitable for an examination of the Convention’s substantive safeguards in respect of climate change. It deals with technical issues relating to procedure, and no domestic court has ruled on the substance of the allegation of a violation of Articles 2 and 8 of the Convention. Therefore, in accordance with the principle of subsidiarity, it is not up to the Court to rule on the substantive obligations of the domestic authorities under the Convention relating to climate change.

## **II. Statement of facts:**

### **A. The Applicants' request for a decision**

6. On 25 November 2016, the Applicants filed with the Federal Council, the Federal Department of the Environment, Transport, Energy and Communications (DETEC), the Federal Office of the Environment (FOEN) and the Federal Office of Energy (SFOE) an application pursuant to Article 25a of the Federal Act of 20 December 1968 on Administrative Procedure (APA)<sup>3</sup> (see Annex 14 to the Application).

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<sup>2</sup> Federal Council press conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, 13.06.2021 – press conference of the Federal Council – YouTube

<sup>3</sup> [SR 172.021 – Federal Act on Administrative Procedure \(APA\) \(admin.ch\)](#)

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They requested that a decision be issued within the meaning of Article 25a APA as well as Articles 6 para. 1 and 13 of the Convention. They made the following submissions (unofficial translation by the Applicant association)<sup>4</sup> :

- “1. By 2020, the Respondents shall take all necessary actions within their competence to reduce greenhouse gas emissions to such an extent that Switzerland's contribution aligns with the target of holding the increase in global average temperature to well below 2°C above pre-industrial levels, or at the very least, does not exceed the 2°C target, thereby putting an end to the unlawful omissions undermining these targets. Notably:
  - a. Respondent 1 shall examine the duties of the Confederation under Art. 74 para. 1 of the Federal Constitution (Const.) and the fulfilment of these duties in the climate sector with the current climate goal and in compliance with:
    - Art. 74 para. 2 and Art. 73 Const. and the constitutional duty of the government to protect the individual in accordance with Art. 10 para. 1 Const;
    - Art. 2 and 8 of the European Convention on Human Rights (ECHR);and shall develop, without delay, a new plan to be implemented immediately and through 2020 that will permit Switzerland to achieve the “well below 2°C” target or, at the very least, not exceed the 2°C target, which requires the reduction of domestic greenhouse gas emissions by at least 25% below 1990 levels by 2020;
  - b. Respondent 1 shall communicate to the Federal Assembly (Parliament) and the general public that – in order to comply with Switzerland's obligation to protect and the principles of precaution and sustainability – a reduction of greenhouse gas emissions is necessary by 2020 in order to meet the “well below 2°C” target or, at the very least, not exceed 2°C target, which requires a domestic greenhouse gas reduction of at least 25% below 1990 levels by 2020;
  - c. With a decision at the level of Federal Council, department or federal office, Respondents 1, 2, or 3 shall initiate, without delay, a preliminary legislative procedure for an emission reduction target as laid out in Legal Request 1(a); and
  - d. Respondent 1 shall inform Parliament in its dispatch as stated in Legal Request 1(c) that the proposed emissions reduction target is in compliance with the Constitution and the ECHR.
2. Respondents shall take all necessary mitigation measures within their competence to meet the greenhouse gas reduction target defined in Legal Request 1, i.e. reducing greenhouse gas emissions by at least 25% below 1990 levels by 2020, thereby putting an end to their unlawful omissions. Notably:
  - a. Respondent 1 shall consider measures to achieve the target as defined in Legal Request 1(a);
  - b. Respondent 1 shall communicate the appropriate measures to reach the target as stated in Legal Request 1(b);
  - c. Respondents 1, 2, or 3 shall, with regard to Legal Request 1(c) above, include measures to achieve the target in the preliminary legislative procedure

<sup>4</sup> See translation published by the Applicant association: [161024\\_synthese\\_action-en-justice\\_def\(klimasenioren.ch\)](#). Only the German text is authoritative (see Annex 14 to the Application).

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3. Respondents shall carry out all acts, within their competence, required to lower emissions by 2030 to such an extent that Switzerland's contribution aligns with the "well below 2°C" target or, at the very least, not exceed 2°C target, thus ending the unlawful omissions inconsistent with these targets. Notably:
  - a. Respondents 1, 2, or 3 shall, in the course of the preliminary legislative procedure, carry out all actions that allow Switzerland to do its share to meet the "well below 2°C" target or, at the very least, not exceed 2°C target, which means a domestic reduction of greenhouse gas emissions of at least 50% below 1990 levels by 2030;
  - b. Respondents 1, 2, or 3 shall include in the preliminary legislative procedure all necessary mitigation measures required to meet the greenhouse gas reduction target as defined in Legal Request 3(a).
4. Respondents shall implement all mitigation measures, in their competence, required to achieve the current greenhouse gas reduction target of 20%, thus ending the unlawful omissions. Notably:
  - a. Respondent 3 shall obtain without delay the reports of cantons detailing the technical measures adopted to reduce the CO<sub>2</sub> emissions from buildings;
  - b. Respondent 3 shall verify that the cantonal reports include data about CO<sub>2</sub> reduction measures that have already been taken or are planned and their effectiveness; demonstrate the progress made to reduce CO<sub>2</sub> emissions from buildings in their territory; and require improvements if necessary;
  - c. Respondent 3 shall verify that cantons are issuing state-of-the-art building standards for new and existing buildings;
  - d. Respondents 1, 2 and 3 shall take the necessary actions if cantons fail verification as stated in Legal Request 4(c); if necessary they shall become active in preparation of new state-of-the-art federal building standards for new and existing buildings;
  - e. Respondent 2, having determined that the interim building sector target for 2015 was not achieved, shall examine the need for improvements by cantons and propose additional effective mitigation measures to Respondent 1;
  - f. Respondents 1, 2, and 3 shall take steps aimed at rapidly increasing the CO<sub>2</sub> levy on thermal fuels;
  - g. Respondent 4 shall require the importers of passenger cars to submit data showing actual CO<sub>2</sub> emissions of passenger cars;
  - h. Respondent 2, given that the interim transport sector target 2015 will likely be missed, shall immediately draft additional and effective mitigation measures and propose them to Respondent 1; in particular, Respondent 1 shall take actions to promote electromobility or else demonstrate that the sector interim target in Art. 3 para. 2 of the CO<sub>2</sub> Ordinance can be achieved without such promotion; and Respondents 1, 2, and 3 shall take steps to raise the compensation rate for the CO<sub>2</sub> emissions from motor fuels;
  - i. Respondent 1 shall make a comprehensive assessment of the effectiveness of measures enacted under the CO<sub>2</sub> Act and consider whether additional measures are necessary, report the findings of the assessment to Parliament, and immediately initiate steps to implement the necessary measures for the period ending in 2020.

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5. Alternatively, with regard to Legal Requests 1, 2, 3 and 4, a declaratory ruling shall be issued that states the respective omissions are unlawful.<sup>5</sup>
7. By decision of 25 April 2017, DETEC declined to deal with the substance of the Application (see Annex 15 to the Application). While DETEC acknowledged that some of the conditions of admissibility had been met – the existence of substantive acts giving rise to a decision within the meaning of Article 25a APA had been admitted – it nevertheless considered that the Applicants' rights were not individually affected and they therefore did not have an interest worthy of protection in bringing the matter before the courts. Therefore, they were not recognised as victims.
8. On 26 May 2017, the Applicants filed an appeal against this decision with the Federal Administrative Court (FAC). They asked the FAC to annul the decision of DETEC and to refer the case back to that authority with the instruction to accept the case for adjudication and to rule, after honouring the Applicants' right to be heard, on the Legal Requests made in the Application (cf. Annex 16 to the Application, p. 2).
9. In its decision A-2992/2017 of 27 November 2018, the FAC dismissed the appeal (cf. Annex 17 to the Application). It points out that women over the age of 75 are not the only population affected by the effects of climate change, as they affect humans, animals and plants in the same way, even if not everyone is affected in the same way. In particular, it states that diverse effects vary among different population groups in terms of economic and health impacts. For the population in cities and agglomerations, for example, heatwaves are a health burden because of the formation of heat islands. Heatwaves in the summer can put infants and small children at risk as well because of their susceptibility to dehydration. It also pointed out that high ozone levels due to the heat can bring about respiratory disorders and impairment of pulmonary function. It also argues that the changed geographic range of carriers of disease such as ticks and mosquitoes will newly affect parts of the population which had previously not been exposed to such risks. Climate change, and in particular the associated change of average temperature and average amounts of precipitation also impact forestry, agriculture, winter tourism and water management, and due to the occurrence of natural perils, landslides, risk of flooding, etc. (Decision A-2992/2017 of the FAC of 27 November 2018, para. 7.4.2 and 7.4.3, Annex 17 to the Application).
10. On 21 January 2019, the Applicants filed a public law appeal with the Federal Supreme Court (FSC). They requested that the Federal Supreme Court overturn the decision of the Federal Administrative Court and refer the case back to DETEC for substantive examination. Alternatively, they requested that the FSC set aside of the judgement under appeal and remand the case to the lower court for reconsideration (cf. Annex 18 to the Application, p. 3).
11. In decision 1C\_37/2019 of 5 May 2020, the Federal Supreme Court dismissed the appeal (cf. Annex 19 to the Application and published in [SCD 146 I 145](#)). In the preamble, the Federal Supreme Court recalls that Article 25a APA does not constitute a legal basis for bringing an *actio popularis* and that in order to bring such an action, persons whose interests were subject to state administration must be suffering prejudice to their rights by the actions or omissions of the authorities. More specifically, it notes that Article 25a APA allows any person to challenge an unlawful omission of the State, provided that there is a specific obligation for the State to act.

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<sup>5</sup> See translation published by the Applicant association: 161024 synthese action-en-justice def (klimaseniorinnen.ch). Only the German text is authoritative (see Annex 14 to the Application).

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It considers that, despite the broad understanding of this term, the question may arise as to whether, as in the case of the reduction of greenhouse gases, a series of state measures may be required on a given topic on the basis of Article 25a APA. It also states that under Swiss constitutional law, requests to give a specific form to current policy areas are in principle made through democratic processes. Finally, it notes that the existence of the rights arising under Article 25a APA presupposes that the person filing the request is to a certain extent affected in his or her personal legal sphere, which is not the case with the Applicants, since their fundamental rights are not affected by the alleged omissions with the degree of intensity required (cf. judgment 1C\_37/2019 of the FSC of 5 May 2020 at 4 and 5, Annex 19 to the Application).

12. On 26 November 2020, the Applicants filed this Application with the Court. In essence, they criticise Switzerland for failing to set climate targets that are compatible with international climate law and the best available scientific knowledge and for failing to implement and apply the measures required to achieve the 2020 emissions reduction target. They further complain that the Swiss courts have not recognised a protectable interest within the meaning of Article 25a APA. According to the Applicants, Switzerland has thus violated Articles 2, 6 para. 1, 8 and 13 of the Convention.

B. Climate policy in Switzerland

13. With regard to the extent of global warming and its effects in Switzerland, the government considers that official information from the FOEN, which is the competent environmental authority and in particular for climate issues, should be used. The available indicators show that Switzerland is particularly affected by climate change. A 2020 report by the FOEN and the Federal Office of Meteorology and Climatology MeteoSwiss entitled "[Climate change in Switzerland](#)"<sup>6</sup> describes Switzerland's contribution to these changes, its observations on the state of the climate and its expected future development, as well as the effects of climate change on natural systems, society and the economy. It also presents key political responses and measures with a view to reducing emissions and adapting to climate change. That report reflects the following findings.
14. In Switzerland, most CO<sub>2</sub> emissions are generated by energy consumption. According to the national greenhouse gas emissions inventory, CO<sub>2</sub> emissions increased sixfold between 1900 and 2018, with the largest increase occurring between 1945 and 1970, when they reached the high level of CO<sub>2</sub> which has prevailed since then. This development is mainly due to strong economic growth and the rapid increase in road traffic.
15. The average temperature in Switzerland has risen by around 2°C since the pre-industrial era, twice as much as the average global temperature rise (0.9°C). The hottest five years of the range of measures available (1864-2019) were all recorded after 2010. The 21<sup>st</sup> century has seen nine of the 10 warmest years since the start of measurements in 1864.

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<sup>6</sup> The report is available on the FOEN website: [fr BAFU UZ 2013 Climate Change bf.pdf](#)

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At the same time, heavy rainfall has become more frequent and more intense<sup>7</sup>.

16. The effects of climate change are becoming increasingly visible, particularly in congested areas. Swiss glaciers have been declining gradually for more than 100 years. Volume loss has accelerated over the last 10 years, reaching an average of 2% per year. It is likely that by the end of this century there will only be vestigial glaciers remaining in the Alpine region.
17. Due to the inertia of the climate system, changes will continue, even if greenhouse gas emissions are stopped immediately. Switzerland must therefore anticipate the foreseeable consequences in good time. It is doing so:
  - In 2012, the Federal Council adopted the Strategy ["Adaptation to Climate Change in Switzerland - objectives, challenges and areas of action. First part of the Federal Council's strategy"](#)<sup>8</sup>. The aim of this strategy was to minimise risks, exploit opportunities and increase adaptability to climate change.
  - In 2014, the Federal Council approved the ["Adaptation to changeClimate Change in Switzerland – Objectives, Challenges and Fields of Action 2014-2019. Second part of the Federal Council's strategy"](#) report.<sup>9</sup> The 2014-2019 Action Plan presented the adaptation measures from the Federal government to take advantage of the opportunities offered by climate change, to minimise risks and to increase the adaptability of society, the economy and the environment.<sup>10</sup>
  - On 27 January 2021, the Federal Council adopted the ["Long-term climate strategy of Switzerland"](#), which sets out the guidelines for climate policy up to 2050 and defines the strategic objectives for the various sectors. It follows from this strategy that "[t]he total revision of the CO<sub>2</sub> Act, adopted by Parliament in the autumn session of 2020, sets the framework for climate policy up to 2030. The new CO<sub>2</sub> Act is an essential prerequisite to Switzerland's achievement of its climate target by 2050" (p. 6). The new CO<sub>2</sub> Act, against which a referendum was initiated, was aimed at halving greenhouse gas emissions by 2030 and reducing greenhouse gas emissions to net zero by 2050.
  - On 13 June 2021, Swiss voters rejected the new CO<sub>2</sub> Act.<sup>11</sup> The current CO<sub>2</sub> Act therefore remains in force. It provides for the following main measures: The CO<sub>2</sub> levy (Art. 29 et seq.), the Buildings Programme (Art. 9 and 34), an emissions trading scheme (Art. 15), the CO<sub>2</sub> emissions regulations for new passenger cars (Art. 10 et seq.), the duty of importers of motor fuels to compensate for their CO<sub>2</sub> emissions (Art. 26 et seq.), a technology base (Art. 35) and Climate Change Programme – Training and Communication (Art. 41).

<sup>7</sup> For an overview of the climate change in Switzerland, including by means of current climate maps and data available at the measuring stations, see the information on the [website of the FOEN](#).

<sup>8</sup> See [FF 2012 3517 – Adaptation to climate change in Switzerland – Objectives, Challenges and Fields of Action. First part of the strategy of the Federal Council \(admin.ch\)](#)

<sup>9</sup> [FF 2014 3465 – Adaptation to climate change in Switzerland – Objectives, Challenges and Fields of Action 2014-2019. Second part of the Federal Council's strategy \(admin.ch\)](#)

<sup>10</sup> [Adaptation to climate change in Switzerland. Action Plan 2014-2019. The second part of the Federal Council's strategy of 9 April 2014](#), p. 4.

<sup>11</sup> Referendum of 13 June 2021, [CO<sub>2</sub> Act \(admin.ch\)](#)

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- Following the referendum on 13 June 2021, the Federal Council indicated that it was aware of the need for swift action. In the short term, it wishes to extend the legislation which has not been challenged. In the medium term, Switzerland will have to find solutions and the Federal Council will assess the options available with all stakeholders. In addition, the Federal Council intends to make progress with regard to the expansion of renewable energies.<sup>12</sup>

### III. Domestic law and practice

#### A. International Law

##### a) *United Nations Framework Convention on Climate Change (UNFCCC)*<sup>13</sup>

18. The United Nations Framework Convention on Climate Change, concluded in New York on 9 May 1992, was approved by the Swiss parliament on 23 September 1993 and the instrument of ratification was deposited by Switzerland on 10 December 1993. The UNFCCC entered into force for Switzerland on 21 March 1994. In particular, it provides as follows:

##### *Art. 2*

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

##### *Art. 3*

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.

<sup>12</sup> Federal Council Press Conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, [13.06.2021 – Press conference of the Federal Council – YouTube](#)

<sup>13</sup> [SR 0.814.01 – United Nations Framework Convention on Climate Change of 9 May 1992 \(with Annexes\) \(admin.ch\)](#)

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Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases, should comprise adaptation measures and apply to all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.
5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

*Art. 4*

<sup>1</sup> All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

- a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
- b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(...)

b) *Paris Climate Agreement (Paris Agreement)* <sup>14</sup>

19. The Climate Agreement, concluded in Paris on 12 December 2015, was approved by the Swiss parliament on 16 June 2017 and the instrument of ratification was deposited by Switzerland on 6 October 2017. The Paris Agreement entered into force for Switzerland on 5 November 2017. In particular, it provides as follows:

*Art. 2*

<sup>14</sup> [RS 0.814.012 – Paris Agreement of 12 December 2015 \(Climate Agreement\) \(admin.ch\)](#)

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- <sup>1</sup> This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
  - a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
  - b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
  - c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- <sup>2</sup> This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

*Art. 3*

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

*Art. 4*

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
4. (...)
5. (...)
6. (...)
7. (...)

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8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.
9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.
10. (...)
11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.
13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.
15. (...)
16. (...)
17. (...)
18. (...)
19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

*Art. 13*

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.
2. (...)
3. (...)
4. (...)
5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.
6. (...)
7. Each Party shall regularly provide the following information:
  - a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and

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- b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.
8. (...).
9. (...)
10. (...)
11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.
12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.
13. (...)
14. (...)
15. (...)

*Art. 14*

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

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*Art. 15*

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
  2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
  3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.
- c) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*<sup>15</sup>
20. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, concluded in Aarhus on 25 June 1998, was approved by the Swiss parliament on 27 September 2013 and the instrument of ratification was deposited by Switzerland on 3 March 2014. It entered into force for Switzerland on 1st June 2014. The purpose of the Directive is to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters (Article 1). The States Parties shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework (Art. 3 (1)).

B. Domestic law

a) *Federal Constitution of the Swiss Confederation of 18 April 1999 (Swiss Const.)*<sup>16</sup>

21. Neither the Constitution nor federal law in general contain provisions establishing a right to a healthy environment. However, the Constitution contains a number of fundamental rights which play a role in the protection of the environment. It also lays down the principle of sustainable development, grants the Swiss Confederation comprehensive competences in the area of environmental protection and defines the objectives of Switzerland's energy policy. In addition, it provides for political rights that facilitate very broad participation of citizens in public debate and in the development of environmental policies:

*Art. 10 Right to life and personal freedom*

- <sup>1</sup> Every person has the right to life. The death penalty is prohibited.
- <sup>2</sup> Every person has the right to personal liberty and in particular to physical and mental integrity and to freedom of movement.
- <sup>3</sup> Torture and any other form of cruel, inhuman or degrading treatment or punishment are prohibited.

*Art. 13 Protection of privacy*

- <sup>1</sup> Every person has the right to privacy in their private and family life and in their home, and in relation to their mail and telecommunications.

<sup>15</sup> [SR 0.814.07 – Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Matters \(Aarhus Convention\) \(admin.ch\)](#)

<sup>16</sup> [SR 101 – Federal Constitution of the Swiss Confederation of 18 April 1999 \(admin.ch\)](#)

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<sup>2</sup> (...)

*Art. 29a Guarantee of access to the courts*

In a legal dispute, every person has the right to have their case determined by a judicial authority. The Confederation and the Cantons may by law preclude the determination by the courts of certain exceptional categories of case.

*Art. 33 Right of petition*

1 Every person has the right, without prejudice, to petition the authorities.

2 The authorities must acknowledge receipt of such petitions.

*Art. 34 Political rights*

<sup>1</sup> Political rights are guaranteed.

<sup>2</sup> The guarantee of political rights protects the freedom of the citizen to form an opinion and to give genuine expression to his or her will.

*Art. 73 Sustainable development*

The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.

*Art. 74 Protection of the environment*

<sup>1</sup> The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance.

<sup>2</sup> It shall ensure that such damage or nuisance is avoided. The costs of avoiding or eliminating such damage or nuisance are borne by those responsible for causing it.

<sup>3</sup> The Cantons are responsible for the implementation of the relevant federal regulations, except where the law reserves this duty for the Confederation.

*Art. 89 Energy policy*

<sup>1</sup> Within the scope of their powers, the Confederation and Cantons shall endeavour to ensure a sufficient, diverse, safe, economic and environmentally sustainable energy supply as well as the economic and efficient use of energy.

<sup>2</sup> The Confederation shall establish principles on the use of local and renewable energy sources and on the economic and efficient use of energy.

<sup>3</sup> The Confederation shall legislate on the use of energy by installations, vehicles and appliances. It shall encourage the development of energy technologies, in particular in the fields of saving energy and the renewable energy sources.

<sup>4</sup> The Cantons shall be primarily responsible for measures relating to the use of energy in buildings.

<sup>5</sup> The Confederation shall take account in its energy policy of the efforts made by the Cantons, the communes and the business community; it shall take account of the conditions in the individual regions of the country and the limitations of what is economically feasible.

*Art. 136 Political rights*

<sup>1</sup> All Swiss citizens over the age of eighteen, unless they lack legal capacity due to mental illness or mental incapacity, have political rights in federal matters. All have the same political rights and duties.

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<sup>2</sup> They may participate in elections to the National Council and in federal votes and launch and sign popular initiatives and requests for referendums in federal matters.

*Art. 138 Popular initiative for the total revision of the Federal Constitution*

<sup>1</sup> Any 100,000 persons eligible to vote may within 18 months of the official publication of their initiative propose a total revision of the Federal Constitution.

<sup>2</sup> This proposal must be submitted to a vote of the People.

*Art. 139 Popular initiative requesting partial revision of the Federal Constitution in specific terms*

<sup>1</sup> Any 100,000 persons eligible to vote may within 18 months of the official publication of their initiative request a partial revision of the Federal Constitution.

<sup>2</sup> A popular initiative for the partial revision of the Federal Constitution may take the form of a general proposal or of a specific draft of the provisions proposed.

<sup>3</sup> If the initiative fails to comply with the requirements of consistency of form, and of subject matter, or if it infringes mandatory provisions of international law, the Federal Assembly shall declare it to be invalid in whole or in part.

<sup>4</sup> If the Federal Assembly is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Cantons. If the Federal Assembly rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favour, the Federal Assembly shall draft the corresponding bill.

<sup>5</sup> An initiative in the form of a specific draft shall be submitted to the vote of the People and the Cantons. The Federal Assembly shall recommend whether the initiative should be adopted or rejected. It may submit a counter-proposal to the initiative.

*Art. 160 Right to submit initiatives and motions*

<sup>1</sup> Any Council member, parliamentary group, parliamentary committee or Canton has the right to submit an initiative to the Federal Assembly.

<sup>2</sup> Council members and the Federal Council have the right to submit motions on business that is under discussion.

*Art. 190 Applicable law*

The Federal Supreme Court and the other judicial authorities apply the federal acts and international law.

*b) Federal Act of 20 December 1968 on Administrative Procedure (APA)<sup>17</sup>*

*Art. 25a Ruling on real acts*

<sup>1</sup> Any person who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it:

- a. refrains from, discontinues or revokes unlawful acts;
- b. rectifies the consequences of unlawful acts;
- c. confirms the illegality of such acts.

<sup>2</sup> The authority shall decide by way of a ruling.

*Art. 44 Principle*

Any ruling shall be subject to an appeal.

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*Art. 48 Right of appeal*

- <sup>1</sup> A right of appeal shall be accorded to anyone who:
  - a. has participated or has been refused the opportunity to participate in proceedings before the lower instance;
  - b. has been specifically affected by the contested ruling; and
  - c. has an interest that is worthy of protection in the revocation or amendment of the ruling.
- <sup>2</sup> Persons, organisations and authorities who are granted a right of appeal by another federal act shall also be entitled to appeal.

c) *Federal Act on the Consultation Procedure of 18 March 2005 (CPA)*<sup>18</sup>

*Art. 1 Scope of application*

- <sup>1</sup> This Act regulates the main aspects of the consultation procedure.
- <sup>2</sup> It applies to consultation procedures that are initiated by the Federal Council, a department, the Federal Chancellery or a parliamentary committee.

*Art. 2 Purpose of the consultation procedure*

- <sup>1</sup> The consultation procedure has the aim of allowing the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation.
- <sup>2</sup> It is intended to provide information on material accuracy, feasibility of implementation and public acceptance of a federal project.

*Art. 3 Subject matter of the consultation procedure*

- <sup>1</sup> A consultation procedure takes place when drafting:
  - a. (...)
  - b. draft legislation in terms of Article 164 paragraph 1 of the Federal Constitution;
  - c. international law agreements that are subject to a referendum in terms of Articles 140 paragraph 1 letter b and 141 paragraph 1 letter d number 3 of the Federal Constitution or which affect essential cantonal interests;
  - d. ordinances and other projects of major political, financial, economic, ecological, social or cultural significance;(...)
- <sup>2</sup> A consultation procedure may also be carried out in projects that do not meet any of the requirements in paragraph 1. 1.

*Art. 4 Participation*

- <sup>1</sup> Anyone and any organisation may participate in a consultation procedure and submit an opinion.
- <sup>2</sup> The following are invited to submit an opinion:
  - a. the cantonal governments;
  - b. the political parties represented in the Federal Assembly;
  - c. the national umbrella organisations for the communes, cities and mountain regions;
  - d. the national umbrella organisations for the economic sector;
  - e. the extra-parliamentary committees and any further interest groups relevant to the individual case.
- <sup>3</sup> The Federal Chancellery maintains a list of parties consulted in terms of paragraph 2 letters a-d.

<sup>18</sup> [SR 172.061 – Federal Act of 18 March 2005 on the Consultation Procedure \(Consultation Procedure Act, CPA\) \(admin.ch\)](#)

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*Art. 8 Procedure for opinions*

<sup>1</sup> The opinions are acknowledged, considered and evaluated.

<sup>2</sup> The results of the consultation procedure are summarised in a report.

*Art. 9 Transparency*

<sup>1</sup> The following are made available to the public:

- a. the consultation documents; as well as all of the documents, position papers and legal opinions mentioned in the explanatory report;
- b. the opinions expressed and, if applicable, the minutes in accordance with Article 7 paragraph 2: on expiry of the consultation period;
- c. after acknowledgement by the initiating authority, the summary of the results of the consultation procedure (Art. 8 para. 2).

<sup>2</sup> Opinions are made publicly available by permitting their inspection, providing copies or by publishing them in electronic form, and they may for this purpose be subjected to technical processing.

(...)

d) *Federal Supreme Court Act of 17 June 2005 (FSCA)*<sup>19</sup>

*Art. 82 Principle*

The Federal Supreme Court shall decide on appeals:

- a. against rulings in cases governed by public law;
- b. (...)
- c. (...)

*Art. 86 Lower courts in general*

<sup>1</sup> An appeal is admissible against rulings:

- a. of the Federal Administrative Court;
- b. (...)
- c. (...)
- d. the cantonal authorities of last instance, provided an appeal to the Federal Administrative Court is not possible.

<sup>2</sup> The cantons shall appoint higher courts to act as authorities immediately preceding the Federal Supreme Court, unless another federal act provides that an appeal may be lodged with the Federal Supreme Court against a decision of another judicial authority.

*Art. 89 Right of appeal*

<sup>1</sup> Any person may lodge an appeal in matters of public law who:

- a. took part in the proceedings before the lower authority or was deprived of the opportunity to do so;
- b. is particularly affected by the contested decision or enactment; and
- c. has an interest that is worthy of protection in the revocation or amendment of the ruling.

<sup>2</sup> The following are also entitled to appeal:

- a. the Federal Chancellery, the Federal Departments or, to the extent provided by federal law, their subordinate units if the contested act is apt to violate federal legislation within their area of responsibility;
- b. the competent body of the Federal Assembly in matters of employment of federal personnel;
- c. municipalities and other public law bodies that invoke the violation of guarantees recognised by the cantonal or federal constitution;

<sup>19</sup> SR 173.110 – Federal Supreme Court Act of 17 June 2005 (FSCA) (admin.ch)

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d. persons, organisations and authorities to whom another federal act grants a right of appeal.

<sup>3</sup> In matters relating to political rights (Art. 82 let. c), any person who has the right to vote in the matter in question is entitled to appeal.

*Art. 95 Swiss law*

An appeal may be filed for violation of:

- a. Swiss law;
- b. international law
- c. (...)
- d. (...)
- e. (...)

*Art. 106 Application of the law*

<sup>1</sup> The Federal Supreme Court applies the law ex officio.

<sup>2</sup> It shall only examine a violation of fundamental rights and provisions of cantonal and intercantonal law if the appellant has invoked and substantiated this objection.

e) *Federal Act of 23 December 2011 on the Reduction of CO<sub>2</sub> Emissions (CO<sub>2</sub> Act)<sup>20</sup>*

*Art. 1 Aim*

<sup>1</sup> This Act is intended to reduce greenhouse gas emissions and in particular CO<sub>2</sub> emissions that are attributable to the use of fossil fuels (thermal and motor fuels) as energy sources with the aim of contributing to limiting the global rise in temperature to less than 2 degrees Celsius.

<sup>2</sup> The Federal Council designates the greenhouse gases.

*Art. 3 Reduction target*

<sup>1</sup> Domestic greenhouse gas emissions must be reduced overall by 20 per cent as compared with 1990 levels, by 2020. The Federal Council may specify sectoral interim targets.

<sup>1bis</sup> Domestic greenhouse gas emissions must be reduced in 2021 by a further 1.5 per cent compared with 1990 levels. The Federal Council may specify sectoral interim targets.

<sup>2</sup> The Federal Council may increase the reduction target to 40 per cent in order to comply with international agreements. A maximum of 75 per cent of the additional reductions in greenhouse gas emissions may be achieved through measures carried out abroad.

<sup>3</sup> The total volume of greenhouse gas emissions is calculated on the basis of the greenhouse gases emitted in Switzerland. Emissions from the use of aviation fuel on international flights are not taken into account.

<sup>3bis</sup> The Federal Council shall determine the extent to which emission allowances from states or communities of states with ETSS recognised by the Federal Council shall be taken into account in order to achieve the reduction target in accordance with paragraph 1.

<sup>4</sup> The Federal Council may set reduction targets for individual economic sectors by agreement with the parties concerned.

<sup>5</sup> It shall at the due time submit proposals to the Federal Assembly on the reduction targets for the period after 2020. It shall consult the parties concerned beforehand.

*Art. 4 Measures*

<sup>1</sup> The reduction target should in the first instance be achieved through measures under this Act.

<sup>20</sup> [SR 641.71 – Federal Act on the Reduction of CO<sub>2</sub> Emissions \(CO<sub>2</sub> Act\) \(admin.ch\)](#)

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<sup>2</sup> Measures that reduce greenhouse gas emissions in accordance with other legislation should also contribute to achieving the reduction target. These measures in particular include those in the fields of environment and energy, agriculture, forestry and timber industry, road traffic and the taxation of mineral oil, as well as voluntary measures.

<sup>3</sup> Voluntary measures also include undertakings by consumers of fossil thermal and motor fuels voluntarily to limit their CO<sub>2</sub> emissions.

<sup>4</sup> The Federal Council may assign suitable organisations to support and carry out voluntary measures.

*Art. 5 Counting emission reductions achieved abroad*

The Federal Council may take appropriate account of reductions in greenhouse gas emissions that have been achieved abroad when calculating emissions under this Act.

*Article 39 Enforcement*

<sup>1</sup> The Federal Council shall implement this Act and issue the implementing provisions. Before doing so, it shall consult the cantons and interested groups.

<sup>1bis</sup> (...)

<sup>2</sup> (...)

<sup>3</sup> (...)

<sup>4</sup> (...)

<sup>5</sup> (...)

*Article 40 Evaluation*

<sup>1</sup> The Federal Council periodically evaluates:

- a. the effectiveness of the measures under this Act;
- b. the necessity of additional measures.

<sup>2</sup> In doing so, it also considers climate-relevant factors such as demographic, economic and traffic growth.

<sup>3</sup> It bases its assessment on statistical surveys.

<sup>4</sup> It submits regular reports to the Federal Assembly.

22. The main measures under the current CO<sub>2</sub> legislation are as follows<sup>21</sup> :

- The CO<sub>2</sub> levy (Art. 29 et seq.)
- The Buildings Programme (Art. 9 and 34)
- The Emissions Trading Scheme (Art. 15 ff.)
- CO<sub>2</sub> emissions regulations for new passenger cars (Art. 10 et seq.)
- Obligation for importers of motor fuels to compensate for their CO<sub>2</sub> emissions (Art. 26 et seq.)
- Technology Fund (art. 35)
- The Climate Programme – Training and Communication (art. 41)

23. On 25 September 2020, the Federal Parliament adopted the Federal Act on the Reduction of Greenhouse Gas Emissions (new CO<sub>2</sub> Act; [FF 2020 7607](#)), with a total revision of the CO<sub>2</sub> Act mentioned in the previous paragraph.

<sup>21</sup> For more detailed information see the CO<sub>2</sub> Act or [Climate: In short \(admin.ch\)](#)

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Upon the initiation of a referendum against the new CO<sub>2</sub> Act, the Swiss people were called upon to vote on the text of the new CO<sub>2</sub> Act on 13 June 2021 (see section 2 and 17 *supra*). According to the Federal Council Dispatch ([FF 2018 229, 230](#)), the new CO<sub>2</sub> Act was to be the cornerstone of Swiss climate policy. It set out the modalities for reducing greenhouse gas emissions by 2020 and required the Federal Council to submit proposals to Parliament in due time for the guidelines for Swiss climate policy from 2021 onwards. Beyond the draft submitted by the Federal Council in 2018 ([FF 2018 373](#)), the new law, as adopted by parliament, provided that by 2030 greenhouse gas emissions would be reduced by at least 50% compared to 1990 and that at least three quarters of the reduction would be achieved by measures taken in Switzerland. The main provisions of the new CO<sub>2</sub> Act were as follows:

*Art. 1 Aim*

<sup>1</sup> This Act aims to reduce greenhouse gas emissions, in particular CO<sub>2</sub> emissions from the energy use of fossil fuels. The objective is to contribute to:

- a. to contain the global average temperature rise well below 2 °C compared to the pre-industrial level and to make efforts to limit this rise to 1.5 °C compared to the pre-industrial level;
- b. to reduce greenhouse gas emissions to a quantity that does not exceed the absorption capacity of the carbon sinks;
- c. to enhance adaptability to the adverse effects of climate change;
- d. to make financial flows compatible with the low-emission development targets and with development that is capable of withstanding climate change.

<sup>2</sup> The Federal Council designates the greenhouse gases.

*Art. 3 Reduction target*

<sup>1</sup> By 2030, greenhouse gas emissions must be reduced by at least 50 per cent compared with 1990 levels. Between 2021 and 2030 greenhouse gas emissions must be reduced by at least 35 per cent on average compared with 1990 levels.

<sup>2</sup> At least three-quarters of the reduction in greenhouse gas emissions in accordance with paragraph 1 must be carried out by means of measures taken in Switzerland.

<sup>3</sup> Emission reductions achieved abroad that are not taken into account for the target in accordance with paragraph 1 which contribute to limiting global temperature rises in accordance with Article 1 must correspond as far as possible to emissions for which Switzerland is jointly responsible abroad.

<sup>4</sup> (...)

<sup>5</sup> (...)

<sup>6</sup> (...)

<sup>7</sup> (...)

<sup>8</sup> The Federal Council shall in due time submit proposals to the Federal Assembly for the post-2030 targets. It shall consult the relevant stakeholders beforehand.

24. In a vote on 13 June 2021, the Swiss people rejected this revision (see section 2 and 17 *supra*). The current CO<sub>2</sub> Act remains in force.

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C. Domestic practice

25. Under 25a APA, any person who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it refrains from, discontinues or revokes unlawful acts, rectifies the consequences of unlawful acts or confirms the illegality of such acts (paragraph 1). The authority shall decide by way of a ruling. (para. 2). In [SCD 146 I 145](#), invoked before the Court, the FSC noted the following (recorded):

"The concept of acts within the meaning of Art. 25a APA must be interpreted broadly and includes the real acts not only where they are individual and concrete, but also where they are general and abstract (at 4.2). Beyond the wording of the law, omissions by the authorities may also be contested (at 4.1). Despite the broad understanding of this term, the question may arise as to whether – as in the present case – a series of state measures may be required on a specific issue on the basis of Art. 25a APA. According to Swiss constitutional law, requests to give a specific form to current policy areas are generally made through democratic mechanisms (at 4.3). The existence of rights under Art. 25a APA presupposes that the personal legal sphere of the Applicant is affected to a certain extent (at 4.1 and 4.4). "

**IV. Failure to comply with the six-month time limit**

26. This application was filed on 26 November 2021, i.e. more than six months after the decision of the Federal Supreme Court of 5 May 2020 (notified to the Applicants on 19 May 2020). On the basis of the extension of the time limit granted by the Court due to the COVID-19 pandemic (see Annex 1 to the Application), the Applicants claim that they had nine months to validly submit the Application (see Application Form, p. 10).
27. It is true that the Court published a statement on its website stating that any Applicant would have nine months from the date of the final domestic decision to lodge an application where the six-month period begins, runs or expires between 16 March and 15 June 2020 (see Annex 1 to the Application). However, the Government recalls that the six-month period provided for in Article 35 (1) of the Convention is a statutory period, expressly provided for by the Convention. The Government is therefore of the opinion that this period is not capable of being extended generally by a court of law, nor can it be extended without prior consultation of the High Contracting Parties.
28. Moreover, the time limit is clear and does not raise any questions of interpretation, so it is not clear why the Court should extend it by making use of its jurisdiction under Article 32 of the Convention. This time limit has been set by the High Contracting Parties and it is therefore the sole responsibility of the High Contracting Parties to amend it, if necessary (as they have done by Protocol 15 to the Convention).
29. According to a letter from the Registrar of the Court of 29 April 2020 (cf. [Annex 1](#)), the extension of the six-month period was decided by the President of the Court on the basis of the principle of *force majeure* in order to guarantee the effective exercise of the right to an individual application. However, the Government considers that the Applicants, represented by lawyers, were in no way confronted with a situation of *force majeure* in Switzerland during the period in question and that they were perfectly capable of referring the matter to the Court within the statutory period of 6 months. If they had effectively been prevented from filing a proper application within the agreed time limit, they could easily have addressed the Court within that time limit to at least state their intention to file an application and request permission to rectify their submission within a short time limit.

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On the basis of the Epidemics Act of 28 September 2012 (EpA; (SR 818.101), the Federal Council ordered the return of the extraordinary situation to the special situation with effect from 22 June 2020. The Applicants themselves do not assert any need that would have justified an extension of the statutory six-month time limit in this specific case. It should also be noted that although the Federal Council extended the court holidays that began on 21 March 2020, it deliberately decided not to order a general suspension of the time limits for appeals. Finally, contrary to the course followed by the President of the Court, the Swiss courts have never ordered an extension of the time limits for appeal and the administration of justice has been ensured without interruption throughout the duration of the COVID-19 pandemic.

30. In view of the above, it cannot be held that there is a case of *force majeure* as invoked by the President of the Court. Consequently, the Government invites the Court to declare the Application inadmissible for failure to comply with the six-month time limit.

**V. Question 1: Can the Applicant association (first Applicant) and Applicants Nos 2 to 5 (natural persons) be considered current or potential victims, within the meaning of Article 34 of the Convention as interpreted by the Court, of a violation of one of the Convention's rights invoked in this case due to the failure of the Swiss authorities to have effectively protected them against the effects of global warming?**

**In particular, have the Applicants suffered, directly or indirectly and seriously, the alleged consequences of insufficient action or inaction by the Respondent State?**

A. Overview of the relevant principles

31. The Court recalls that in order to invoke Article 34 of the Convention, an Applicant must be able to claim to have been the victim of a violation of the Convention. The notion of "victim" within the meaning of Article 34 must be interpreted autonomously and independently of domestic concepts such as those of interest or standing to sue (decision [GC] *Lambert and others v. France*, 5 June 2015 no. 46043/14, para. 89; Decision *Le Mailloux v. France*, no. 18108/20, 28 June 2011; Decision *Ouardiri v. Switzerland*, no. 65840/09, 28 June 2011; *Sanles v. Spain* (Dec.), no. 48335/99, ECHR 2000-XI; *Gorraiz Lizarraga et al. v. Spain*, no. 62543/00, para. 35, ECHR 2004-III; *Tourkiki Enosi Xanthis and others v. Greece*, no. 26698/05, para. 38, 27 March 2008). It primarily means the direct victims of the alleged infringement, i.e. the persons directly affected by the alleged acts constituting interference (*Norris v. Ireland*, 26 October 1988, para. 31, series A no. 142; *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, para. 43, series A no 246-A; *Otto-Preminger-Institut v. Austria*, 20 September 1994, para. 39-41, series A no. 295-A; *Tanrikulu et al. v. Turkey* (Dec.), no. 40150/98, 6 November 2001; *SARL du Parc d'Activités de Blotzheim v. France*, no. 72377/01, para. 20, 11 July 2006).
32. The Court will exceptionally agree to examine a request from a person who would only have been indirectly affected by the alleged violation of the Convention (*Vatan v. Russia*, no. 47978/99, para. 48, 7 October 2004). The Court has thus accorded the status of indirect victim to relatives of the direct victim, such as the spouse of a woman forced to undergo a gynecological examination (*Fidan v. Turkey* (Decision), no 24209/94, 29 February 2000) or the nephew of a person who died in suspect circumstances (*Yaşa v. Turkey*, 2. September 1998, para. 61-66, Reports of Judgments and Decisions 1998-VI).

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33. On the other hand, the Court also accords, on a very exceptional basis, the status of victim to certain persons likely to be affected by the facts allegedly constituting interference. It thus accepted the notion of potential victim in the following cases: where the Applicant was unable to demonstrate that the legislation which he referred to had actually been applied to him, due to the secrecy of the measures permitted by that legislation (*Klass et al. v. Germany*, 6 September 1978, para. 34, series A no. 28); where the Applicant was obliged to change his conduct under penalty of criminal prosecution (*Dudgeon v. United Kingdom*, 22 October 1981, para. 40-41, series A no. 45; *Norris, supra*, para. 29; *Bowman v. United Kingdom*, 19 February 1998, para. 29, Reports 1998-I) or where the Applicant belonged to a category of persons who were at risk of being directly affected by the effects of the contested legislation (*Marckx v. Belgium*, 13 June 1979, para. 27, series A no. 31; *Johnston et al. v. Ireland*, 18 December 1986, para. 42, series A no. 112; *Open Door and Dublin Well Woman, supra.*, para. 43-44; *S.L. v. Austria* (Dec.), no 45330/99, 22 November 2001; *Burden v. United Kingdom* [GC], 29 April 2008, no 13378/05, para. 35, ECHR 2008).
34. In any event, regardless of whether the victim is direct, indirect or potential, there must be a link between the Applicant and the loss he considers he has suffered as a result of the alleged infringement (*Taurira et al. v. France*, no 28204/95, Commission Decision of 4 December 1995, Decisions and Reports (DR) 83-A, p. 130; *Association des amis de Saint-Raphaël et de Fréjus et al. v. France*, no. 38192/97, Commission decision of 1 July 1998, DR 94-A, p. 124; *Comité des médecins à diplôme étranger et al. v. France* (dec.), n<sup>os</sup> 39527/98 et 39531/98, 30 mars 1999; *Gorraiz Lizarraga supra.*, para. 35, ECHR 2004-III).
35. Indeed, the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein; or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. (*Norris, supra*, para. 31, series A no. 142; *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, para. 28, 22 December 2009).
36. Turning to the connection between a decision renewing a permit to operate a nuclear power plant and the Applicants' rights to the protection of their life, physical integrity and property in order to bring Article 6 (1) into play, the Court found that the Applicants had not for all that established a direct link between the operating conditions of the power station which were contested by them and their right to protection of their physical integrity, as they failed to show that the operation of power station exposed them personally to a danger that was not only serious but also specific and, above all, immediate. In the absence of such a finding, the effects on the population of the measures which the Federal Council could have ordered to be taken in the instant case therefore remained hypothetical. Consequently, neither the dangers nor the remedies were established with a degree of probability that made the outcome of the proceedings directly decisive within the meaning of the Court's case-law on the right relied on by the applicants. In the Court's view, the connection between the Federal Council's decision and the right invoked by the applicants was too tenuous and remote (decision [GC] *Balmer-Schafroth et al. v. Switzerland*, no 22110/93, 26 August 1997, para. 40; decision in *Athanassoglou et al. v. Switzerland* [GC], no 27644/95, 6 April 2000, para. 51).
37. With regard to the issue of non-governmental organisations, the Court recalled that the status of "victim" may be granted to an association – but not to its members – if it is directly affected by the contested measure (*Bursa Barosu Başkanlığı et al. v. Turkey*, 19 June 2018, no 25680/05, para. 112 with reference to *Association of Friends of St. Raphael de Fréjus et al. v. France* (dec.), no. 45053/98, 29 February 2000, *Dayras et al. and the association "SOS Sexisme" v. France* (dec.), 65390/01, 6 January 2005). According to the Court, an association or a trade union cannot claim themselves to be victims of measures that would

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have infringed the rights the Convention accords to the members of such organisation. The same applies when the association or trade union in question has as its statutory object the defence of the interests of its members (*Bursa Barosu Başkanlığı et al. v. Turkey supra.*, para. 112 with reference to *Ordre des avocats défenseurs et avocats près la cour d'appel de Monaco v. Monaco* (dec.), no 34118/11, 21 May 2013). The Court further held that, in principle, an association is not in a situation where it may invoke health reasons to allege a violation of Article 8 of the Convention (cf. *Greenpeace e. V. et al. v. Germany* (Dec.), 12 May 2009, no 18215/06).

B. Application of these principles to the present case

a) *Absence of causation*

38. With regard to the interference with the rights guaranteed by Articles 2 and 8 of the Convention, the Applicants argue that they have suffered and continue to suffer from the effects of heat and that they run a real and serious risk of mortality and morbidity with each heat-wave (see Additional Submission, para. 33).
39. The Government considers that the Applicants have not established a causal link between the alleged omissions of Switzerland and the aforementioned interference. It reiterates that global warming is a global phenomenon and that only resolute action by all states, combined with changes in behaviour by private actors and all citizens, will enable us to find lasting solutions to this immense challenge (cf. 1 *supra*). Greenhouse gas emissions are caused by the community of states. In addition, states emit different quantities of greenhouse gases. Given Switzerland's low greenhouse gas intensity today (see 105 and 106 *infra*), the omissions for which Switzerland is being blamed are not of such magnitude as to cause, on their own, the suffering claimed by the Applicants, nor are they of such magnitude as to have serious consequences for their private and family life.
40. In view of the above, the Applicants cannot be considered victims of a violation of Articles 2 and 8 of the Convention based on the omissions alleged against Switzerland. The Applicants did not seriously suffer the consequences of the inadequate action or inaction on the part of Switzerland, as alleged.

b) *Status of "victim" of the Applicant association (first Applicant)*

41. By invoking Articles 2 and 8 of the Convention, the Applicant association claims that it is a direct victim under Article 34 of the Convention (Additional Submission, para. 35 et seq.). With regard to Articles 6 and 13 of the Convention, the Applicant association argues that it was a party to the national proceedings and that it is therefore clearly a victim in this context (cf. Additional Submission, para. 41).
42. The Government emphasises that in the present case, the Federal Administrative Court has left open the question of whether the requesting association has the right to submit the request to DETEC and subsequently to appeal (cf. decision of the Federal Administrative Court A-2992/2017 of 27 November 2018, para. 1.2, annex 17 to the Application). Similarly, the FSC left open the question of whether the Applicant association had the right of appeal (cf. judgment 1C\_37/2019 of the FSC of 5 May 2020, para. 1, Annex 19 to the Application).

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43. The Government recalls that the Applicant association is a legal entity. In that capacity, it cannot claim that it is itself the victim of a violation of the right to life (Art. 2 ECHR) and the right to privacy and family life (Art. 8 ECHR). In particular, it may not invoke health problems (cf. *Greenpeace E. V. et al. v. Germany* (dec.) *supra*; *Aly Bernard and 47 others as well as Greenpeace-Luxembourg v. Luxembourg*, no 29197/95, 27 June 1999, En droit margin no. 1). In view of the above, the Applicant association is likewise unable to claim to have been the victim of a violation of Articles 6 and 13 of the Convention.
44. The Applicant association does not invoke its own rights, but the rights of its members aged 75 or over arising from Articles 2 and 8 of the Convention. To the extent that the Applicant association acts as the representative of its members, it follows from the following considerations (ch. 47)) that the members of the Applicant association do not have the status of victim as regards Articles 2 and 8 of the Convention.
45. Moreover, the decision of the Federal Supreme Court does not prevent the Applicant association from working towards achieving its objectives (cf. *Ordre des avocats défenseurs et avocats près la cour d'appel de Monaco v. Monaco* (dec.), 21 May 2013, no 34118/11, para. 58 with reference; *Nencheva et al. v. Bulgaria*, 18 June 2013, no 48609/06, para. 92).
46. In view of the above, the Applicant association is not personally injured and it is not a “victim” within the meaning of Article 34 of the Convention. It has not directly or indirectly or seriously suffered the alleged consequences of the omissions of which Switzerland is accused. Consequently, the Government invites the Court to declare the objections of the Applicant association to be incompatible *ratione personae* with the provisions of the Convention and to declare that part of the Application inadmissible pursuant to Article 35 paras. 3 (a) and 4.
- c) *“Victim” status of Applicants 2 to 5*  
Articles 2 and 8 of the Convention
47. Referring to Articles 2 and 8 of the Convention, the Applicants 2 to 5 claim that they are direct and potential victims of a violation of these Articles (cf. Additional Submission, para. 33 and 34). In support of their status as “direct victims”, they claim that they have been suffering and continue to suffer from the effects of heat. They allege that at each heatwave they were and continue to be exposed to a real and serious risk of mortality and morbidity which is higher than the general population (see Additional Submission, para. 33). In support of their status as “potential victims”, they argue that failure to reduce greenhouse gases in accordance with the limits of the Paris Agreement will significantly increase their risk of heat-related mortality and morbidity (see Additional Submission, para. 34).
48. The Government first emphasises that before the Federal Supreme Court, the question was not whether Switzerland has sufficiently protected the Applicants *to this day* against the consequences of global warming. The Applicants have indeed claimed a violation of their fundamental rights as a result of an alleged failure to take *additional preventive measures*. In addition, they did not claim to have suffered a loss for which they wished to claim compensation (*Balmer-Schafroth et al. v. Switzerland, supra*, para. 33; *Athanassoglou et al. v. Switzerland, supra*, para. 51).

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49. The Government goes on to point out that, according to the Court's jurisprudence, neither Article 8 nor any other provision of the Convention specifically guarantee general protection for the environment as such. The crucial element in determining whether, in a particular case, environmental damage has given rise to a violation of one of the rights guaranteed by Article 8 para. 1 of the Convention is the existence of an adverse effect on a person's private or family life, and not merely the general deterioration of the environment (*Di Sarno et al. v. Italy*, 10 January 2021, no. 30765/08, para. 80 with references).
50. With regard to the alleged adverse effects invoked by the Applicants nos. 2 to 5 (cf. Additional Submission, para. 7 et seq., para. 33), the intensity of these effects must first be taken into account:
51. In their personal statements (cf. Annexes 4-7 to the Application), the Applicants claim that they have adapted their lifestyle to heat ("Mediterranean living", cf. Statement of Applicant no. 5, annex 7 to the Application). For example, in the event of high temperatures, they would remain at home, use the air conditioner or fan, lower the blinds, avoid outdoor activities (see annexes 4-7 to the Application). The Government stresses that such behavioural adjustments during the warmest days of the year are very common phenomena. It is well known that a large proportion of the population takes similar measures in the event of high temperatures. The fact that the Applicants 2-5 may themselves be more sensitive than other persons of the same age placed in the same situation does not change this since the severity of the alleged or future harm must be measured objectively and not subjectively. The Applicants, as well as the group of all women over the age of 75, are not the only population affected by the effects of climate change. These consequences affect humans, animals and plants, even if not every person necessarily reacts in the same way (cf. decision A-2992/2017 of the Federal Administrative Court of 27 November 2018, para. 7.4.2 and 7.4.3, Annex 17 to the Application).
52. Applicant 2 claims to wear a pacemaker and to have fainted once in the summer of 2015 due to the heat (cf. Additional Submission, para. 8; medical certificate of 15 November 2016, Annex 8 to the Application). However, she does not claim that her wearing of a pacemaker was the result of the alleged omissions and inadequate actions. In addition, it follows from the medical certificate that heat was only one of the triggers of her syncope.
53. Applicant 3 asserts that she suffers from cardiovascular problems, that she is profoundly impaired in her physical capacity by the heatwaves, that she is confined to her home during periods of high temperatures and that she needs medication (cf. Additional Submission, para. 9; medical certificate of 19 October 2016 and 11 February 2019, Annex 9 and 10 to the Application). However, she does not claim that her cardiovascular problems are the result of the alleged omissions and inadequate actions. In addition, her alleged impairment of physical capacity and required medication are formulated in very vague terms.

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54. Applicants nos. 4 and 5 allege that they suffer from respiratory diseases (cf. Additional Submission, para. 33). However, they do not argue that the respiratory diseases that they already claim to suffer from are due to alleged omissions and inadequate actions. Applicant no. 4 argues that the heatwaves aggravate her symptoms (cf. Additional Submission, para. 10), but she does not demonstrate to what extent this aggravation is the result of the alleged omissions and insufficient actions.
55. In the present case, the Federal Supreme Court held that the Applicants – like the rest of the population – have not suffered effects on their rights under Articles 2 and 8 of the Convention with the necessary degree of intensity as a result of the alleged omissions. It considered that their request should be classified as an *actio popularis* and that it is therefore inadmissible under Article 25a APA, which only guarantees the protection of individual rights. Similarly, it concluded that they do not have the status of a victim within the meaning of Article 34 of the Convention (cf. [SCD 146 I 145](#), at 5.4 and 5.5). In support of this conclusion, the Federal Supreme Court stressed that the value of “well below 2 degrees Celsius” under the Paris Agreement has not been exceeded so far and that it must be assumed that it will not be exceeded in the near future, either (cf. [SCD 146 I 145](#), at 5.3 and 5.4). Therefore, the negative effects on the enjoyment of the rights of the Applicants nos. 2-5 arising from Articles 2 and 8 of the Convention, which, in their view, go hand in hand with the above-mentioned value being reached and which are no longer compatible with these guarantees, have in fact not yet occurred, nor will they occur in the near future. In view of the above, the alleged omissions do not affect the Applicants 2-5 with the intensity required to qualify them as direct victims of the alleged violations of Articles 2 and 8 of the Convention. The mere possibility that, in the longer term, this value may be reached is not sufficient (cf. *decision Ouardiri v. Switzerland supra.*).
56. With regard to the status of “potential victim”, it should be recalled that the Court has held that only in exceptional circumstances may the risk of a future violation confer on an individual Applicant the status of “victim”, but that this is subject to submission of reasonable and convincing evidence of the likelihood of a violation occurring which relates to him personally; simple suspicions or conjectures are insufficient in this regard (decision *Aly Bernard and 47 others as well as Greenpeace-Luxembourg v. Luxembourg*, no 29197/95, 27 June 1999, “En droit margin no. 1).
57. In this case, it should be recalled that according to the Intergovernmental Panel on Climate Change (IPCC), global warming is likely to reach 1.5 °C between 2030 and 2052 if it continues to increase at the current rate (high confidence level). More specifically, the IPCC expects global warming to reach 1.5 °C around 2040 if it continues to increase at the current rate.<sup>22</sup> Global warming of 2 °C would occur even later. The Paris Agreement, as well as the international climate protection system, are therefore based on forecasts that the value of “well below 2 degrees Celsius” will not be exceeded in the near future. It is therefore acknowledged that there is a certain period of time to prevent global warming exceeding this value (see in particular Articles 3 and 4 of the Paris Agreement).
58. In view of the above, there is no real risk for the Applicants 2-5 that, in the near future, their rights under Articles 2 and 8 of the Convention will be violated. Applicants no. 2-5 have not produced any evidence or even plausible and convincing indications of the likelihood of a violation of which they would personally suffer the effects such that they would be considered potential victims.

<sup>22</sup> IPCC Special Report “[Global warming of 1.5](#)”, 2018, p. 4 and 81

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59. Moreover, the Applicants do not demonstrate that the changes in their behaviour during periods of high temperatures are the result of the omissions and insufficient actions they claim. Instead, they argue that these adjustments are the result of the global phenomenon of global warming (cf. for the absence of causal link, see 38 ff. *supra*).
60. In addition, the Applicants allege that elderly women die from heatwaves or suffer illness related to heatwaves (see Additional Submission, Section 1.1). This argument, which is the basis of their request, concerns a certain section of the population, but not themselves as individuals. Moreover, the requests made by the Applicants in the proceedings before DE-TEC (cf. section 6 *supra*) tended to relate to general and abstract measures and not any individual and concrete decision.
61. In view of the above, the Swiss Government considers that the present application is clearly an *actio popularis* and that Applicants 2-5 cannot be considered victims, within the meaning of Article 34, of the alleged violations. Recognising them as direct or potential victims in this case would in fact mean that it would be very difficult, if not impossible, in future to deny anyone the right, at any time, to obtain judicial review of the measures taken to combat global warming. Consequently, the Government invites the Court to declare the Applications of the Applicants 2-5 concerning Articles 2 and 8 of the Convention incompatible *ratione personae* with the provisions of the Convention and to declare that part of the Application inadmissible pursuant to Article 35 para. 3 (a) and 4 of the Convention.

#### Articles 6 and 13 of the Convention

62. Referring to Articles 6 and 13 of the Convention, Applicants 2-5 argue that they were parties to the domestic proceedings and that, therefore, they are clearly victims in this context (cf. Additional Submission, para. 41).
63. The Government accepts that the Applicants 2-5 were parties to the domestic proceedings. Therefore, it considers that they may be considered victims within the meaning of Article 34 of the Convention, in the context of the alleged violations of Articles 6 and 13 of the Convention (cf. *Gorraiz Lizarraga et al. v. Spain supra.*, para. 36, concerning Article 6 of the Convention).

#### C. Conclusion

64. In view of the above, the Government considers that the Applicant association (first Applicant) cannot be considered a victim of a violation of the Convention and that that part of the Application must be declared inadmissible. With regard to the Applicants nos. 2-5, they likewise cannot be considered victims of a violation of Articles 2 and 8 of the Convention. That part of the Application must therefore also be declared inadmissible. On the other hand, the Applicants 2-5 may be considered victims of a violation of Articles 6 and 13 of the Convention. Consequently, only that part of the Application is admissible.

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65. The Government is of the opinion that the main objective of the request is, in fact, to attempt to circumvent the Paris Agreement by seeking to construct an international judicial review of the measures adopted by Switzerland to limit greenhouse gases. However, the fact is that during the negotiations on the Paris Treaty, the Parties indeed considered the possibility of providing the Agreement with a binding mechanism for individual monitoring of the commitments of the States, but ultimately decided not to do so. In accordance with Article 14 of the Agreement, they have in fact entrusted the Conference of the States Parties with the task of carrying out a periodic global review in order to assess the collective progress achieved. They have also opted for the establishment of a facilitation-oriented implementation monitoring mechanism that operates in a transparent, non-accusatory and non-punitive manner as provided for in Article 15 of the Agreement.
66. In the light of the principles of international law, it is thus clear that the monitoring mechanism set up by the Paris Agreement cannot be replaced by a contradictory and punitive judicial mechanism based on another treaty, namely the Convention. In addition, most of the States Parties would escape such a judicial mechanism as they are not parties to the Convention, which would, at the very least, be inequitable. The Court itself, moreover, very recently recalled, in the context of the Convention on the Rights of Persons with Disabilities, that its task is to ensure that the text of the European Convention on Human Rights is complied with. It is the Convention which the Court can interpret and apply; it does not have authority to ensure respect for international treaties or obligations other than the Convention (judgment *Caamaño Valle v. Spain*, no 43564/17, 11 May 2021, para. 53-54).
67. If the individual request mechanism established by the Convention is not, as it stands, appropriate to deal with the present request, this does not mean that the issue of global warming and its consequences need not be addressed in the Council of Europe. However, it is essential to avoid establishing judicial or quasi-judicial control of climate disputes by the back door, going against the clearly expressed will of states. Proceeding otherwise would risk undermining the Court's authority. The Swiss Government is of the opinion that the only realistic possibility offered by the Convention system to enable the Court to address the challenges of global warming while remaining within its competence is Protocol 16.

**VI. If question no. 1 is answered in the affirmative, has there been a violation of Articles 2 and 8 of the Convention in this case?**

A. Answer to Question 2

68. In the event that the Court does not declare the claims of violation of Articles 2 and 8 of the Convention inadmissible, the Government expresses its views on question 2 as follows:
69. In the event that question No 1 is answered in the affirmative by the Court, the Government considers that Article 2 is not applicable and that the question of the applicability of Article 8 may be left open. If the Court should conclude that Articles 2 and/or 8 of the Convention are applicable, the Government considers that there has clearly been no breach of Articles 2 and/or 8 of the Convention.

B. Absence of causation

70. With regard to the interference with the rights guaranteed by Articles 2 and 8 of the Convention, the Applicants argue that they have suffered and continue to suffer from the effects of heat and that they run a real and serious risk of mortality and morbidity with each heat-wave (cf. Additional Submission, para. 33).

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71. The Government considers that the Applicants have not established a causal link between the alleged omissions of Switzerland and the aforementioned interference. It follows that, for this reason alone, Switzerland cannot be accused of any violation of Article 8 of the Convention, or *a fortiori* of Article 2 of the Convention.
- C. Were Articles 2 and 8 of the Convention applicable to the case at hand?
- a) *Overview of the relevant principles*
72. The Court reaffirmed that Article 2 of the Convention concerns not only cases of human death resulting from the use of force by state officials, but also imposes, in the first sentence of the first paragraph, a positive obligation on states to take all necessary measures to protect the lives of persons under their jurisdiction. The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites (decision [GC] *Öneryildiz v. Turkey*, no. 48939/99, 30 November 2004, para. 71).
73. The State's duty to safeguard the lives of persons within its jurisdiction has been interpreted to include both substantive and procedural aspects, including the positive obligation to adopt regulatory measures and to inform the public adequately of any life-threatening situation and to ensure that all the circumstances of such deaths are investigated by the courts (*Öneryildiz, supra*, para. 89-118). As far as the material aspect is concerned, the Court has ruled that, in the particular context of dangerous activities, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. Among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. In any event, the relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (*Öneryildiz, supra*, paras. 89-90; *Budayeva et al. v. Russia*, no 15339/02, 20 March 2008, para. 130).
74. Article 8 of the Convention protects the right of the individual to respect for his or her private and family life, home and correspondence. There is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 of the Convention (judgment *Hatton et al. v. United Kingdom*, no 36022/97, 8 July 2003, para. 96 and cited references; *Greenpeace e.V. et al. v. Germany, supra.*).
75. Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (judgment *López Ostra v. Spain*, no 16798/90, 9 December 1994, para. 51; *Tătar v. Romania, supra.*, para. 85; *Greenpeace e.V. et al. v. Germany, supra.*).

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76. In cases where the concept of severity threshold has been specifically examined in environmental matters, the Court has ruled that a defensible complaint on the terrain of Article 8 of the Convention may arise if an environmental risk reaches a level of severity that significantly reduces the Applicant's ability to enjoy his or her home or private or family life. The assessment of this minimum level in this type of business is relative and depends on all the data in the case, in particular the intensity and duration of the nuisance as well as its physical or psychological consequences on the health or quality of life of the affected person (judgments *Fadeïeva v. Russia*, no 55723/00, 9 June 2005, para. 68 and 69, *Dubetska et al. v. Ukraine*, no 30499/03, para. 105, 10 February 2011, and *Grimkovskaya v. Ukraine*, no 38182/03, para. 58, 21 July 2011; *Cordella*, *supra.* para. 157).
77. Therefore, Article 8 of the Convention may apply in environmental matters, whether the pollution is directly caused by the State or whether the State's responsibility results from the lack of adequate regulation of private sector activity. While the main purpose of Article 8 of the Convention is to protect the individual against arbitrary governmental interference, it does not merely require the State to refrain from such interference: to this rather negative commitment can be added positive obligations inherent in effective respect for private or family life (judgment *Airey v. Ireland* of 9 October 1979, series A no. 32, p. 17, para. 32). Whether the case is addressed from the perspective of a positive obligation on the State to take reasonable and appropriate measures to protect the rights of the Applicants under Article 8 (1) of the Convention, or from the perspective of interference by a public authority to be justified under paragraph 2, the applicable principles are relatively close to each other (*Tătar*, *supra.*, para. 87). In both cases, consideration must be given to the fair balance to be maintained between the competing interests of the individual and of society as a whole, the State enjoying in any event a certain degree of discretion (*Cordella*, *supra.* para. 158; *López Ostra*, *supra.*, para. 51).
78. The positive obligation to take all reasonable and appropriate measures to protect the rights conferred by the Applicants in Article 8 (1) of the Convention entails, a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (*Budayeva v. Russia*, *supra.*, para. 129-132). When it comes to dealing with complex environmental and economic policy issues for a State, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk which may result from this. This obligation must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (*Oneryildiz v. Turkey*, *supra.*, para. 90). It should also be pointed out that a governmental decision-making process concerning complex issues of environmental and economic policy must necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake (*Hatton et al.*, *supra.*, para. 128). There is no doubt about the importance of public access to the findings of these studies as well as to information to assess the danger to which it is exposed (*see, mutatis mutandis*, *Guerra* *supra.*, para. 60, and *McGinley and Egan* *supra.*, para. 97).

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Finally, the individuals concerned must also be able to appeal to the courts against any decision, action or omission if they consider that their interests or observations have not been sufficiently taken into account in the decision-making process (*Tătar, supra.*, para. 88; *Hatton, supra.*, para. 128; *Taşkin et al. v. Turkey*, no 46117/99, 10 November 2004, ECR 2004-X, para. 118-119; *Ökçan et al. v Turkey*, no 46771/99, 28 March 2006, para. 43).

b) *Application of these principles to the present case*

Non-applicability of Article 2 of the Convention

79. While the reality of the hazards associated with global warming is evident, the Applicants have not, however, succeeded in demonstrating the existence of an “immediate” danger to their lives (cf. *Öneryıldız, supra.*, para. 100). The Government therefore considers that Article 2 of the Convention is not applicable in the present case (cf. [SCD 146 I 145](#), at 5).

Applicability of Article 8 of the Convention left open

80. Since the Court has recognised that serious environmental harm may affect a person’s well-being and deprive him or her of the enjoyment of his or her home in such a way as to harm his or her private and family life, the Government is of the opinion that Article 8 of the Convention may, in principle, apply in the context of climate change. It is a well-known fact that accelerating global warming is an extremely worrying phenomenon for mankind and that it results from man-made CO<sub>2</sub> emissions. Global warming is undoubtedly likely to affect the quality of life of individuals, even if their health would not be seriously endangered.
81. However, in the present case, and in light of the behavioural adjustments made by the Applicants 2-5 (“Mediterranean living”, see 50 *supra*), the Government considers that climate change has not reached a level sufficient to have a tangible effect on the private and family lives of the Applicants. The minimum severity threshold required to be able to consider that Article 8 of the Convention is applicable has not been reached (cf. *Calancea et al. v. Republic of Moldova* (dec.), 6 February 2018, no 23225/05, para. 27 and 32; e contrario *Dubetska et al. v. Ukraine, supra.*, para. 119). The Government is thus not convinced that Article 8 applies in this case, but considers that this issue may be left open in the light of the following developments.

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D. Has the Respondent State failed to fulfil its positive obligations to effectively protect life (Article 2) and/or to respect the Applicants' private and family life, including their home (Article 8)?

In particular, given its margin of appreciation in environmental matters, has the Respondent State fulfilled its obligations under the Convention guarantees being relied upon here, read in the light of the relevant provisions and principles, such as the principles of precaution and intergenerational equity, which are contained in international environmental law? In this context, has it adopted appropriate regulations and implemented them by means of adequate and sufficient measures to achieve the targets for combating global warming (see, for example, *Tătar v. Romania*, n° 67021/01, para. 109 and 120, 27 January 2009, and *Greenpeace e.V. et al. v. Germany* (Dec.), n° 215/06, 19 May 2009)?

a) *Preliminary remarks*

82. If the Court should consider that Articles 2 and/or 8 of the Convention are applicable to the present case, the Government expresses its views on the merits as follows:
83. In the present case, the Applicants accuse Switzerland of failing to take sufficient preventive measures to contain global warming. They complain in particular about Switzerland's failure to comply with its positive obligations under Articles 2 and 8 of the Convention, read in the light of the commitments made under the Paris Agreement, the precautionary principle, the best scientific evidence available, the evolving standards of national and international law and the emerging consensus (see Additional Submission, para. 56). Under these obligations, Switzerland should do its utmost to make its contribution to avoiding that the global temperature does not exceed the target of 1.5 °C increase in warming (see Additional Submission, para. 57). According to the Applicants, Switzerland has failed to take the necessary measures to effectively protect them against the risks arising from climate change (see Additional Submission, para. 59).
84. In order to respond to the Applicants' allegations, it is first necessary to examine the objectives set out in the Paris Agreement and the nature of the commitments entered into by Switzerland in this regard (see 85 ff). The legislative and administrative framework adopted by Switzerland (para. 94 et seq.), and the compatibility of Switzerland's commitments with the Paris Agreement (para. 98 et seq.) as well as Articles 2 and 8 of the Convention (para. 108 et seq.) will then have to be presented. Finally, it will be necessary to consider how to ensure effective public participation (see 119 ff).

b) *Paris Agreement: the legal nature of the commitments entered into by the States Parties*

85. The Paris Agreement established a number of legally binding obligations for the parties (see Article 4.2, first sentence, 4.8, 4.9, 4.13 and 13.7). However, most of these obligations are of a procedural nature and require parties to submit certain types of information at certain times or at regular intervals or to report or render an accounting in accordance with the agreed rules. Moreover, there is no doubt that the Paris Agreement does not create any subjective rights that individuals may invoke, but that the obligations set out therein are addressed only to the High Contracting Parties that have ratified this instrument.

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86. Having said that, it should not be forgotten that not all the provisions of the Paris Agreement necessarily set out legally binding obligations for the States Parties. For example, a number of substantive mitigation provisions are formulated as recommendations and not as legal obligations<sup>23</sup>. Nor does the Paris Agreement establish an autonomous monitoring mechanism, and all of its provisions are not necessarily suitable for judicial review by the courts<sup>24</sup>. As the Parties to this Agreement have not reached agreement on these issues during the negotiations, there is some uncertainty as to the exact legal scope of certain provisions, including amongst commentators.
87. By way of example, the central obligation of the Paris Agreement set out in Article 4.2, first sentence, provides that "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve." This is the only legally binding mitigation obligation ("*mitigation*") and is of a strictly procedural nature. In other words, it does not require States Parties to implement their NDCs. In this respect, it is interesting to note that during the negotiation of the Paris Agreement, a proposal for wording requiring the States Parties to "*achieve*" their objectives was rejected<sup>25</sup>.
88. Article 4.2, 2<sup>nd</sup> sentence, for its part, simply requires the Parties pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. The potentially binding nature of the second sentence of Article 4.2, which provides that "the Parties (and not "each Party") shall pursue domestic mitigation measures with the aim of achieving the objectives of such contributions", is far from established and remains controversial. For one sub-section of legal scholars, this sentence only establishes a code of conduct, but its implementation itself is not legally binding, nor has the Party obliged itself to achieve the objective. The States Parties are, however, not entirely free to determine their measures as they are required to design measures that enable them to achieve this objective<sup>26</sup>. This means, in particular, that the States Parties must engage in legislative and political processes with a view to establishing, administering and implementing such measures. Whether or not this provision is binding, it appears that it can only constitute a standard of conduct and not an obligation to achieve results<sup>27</sup>. In the opinion of the Swiss Government, Article 4.2, 2<sup>nd</sup> sentence thus expresses a certain standard of conduct (or due diligence), which corresponds to what a responsible State should do under normal conditions, in a given situation, with the best available and feasible means. If a State fails to do so, for example by refusing to initiate (or interrupting) a legislative and political process to establish and implement such mitigation measures, this may constitute a breach of its duty of care.
89. On the basis of articles 4.3 and 4.4 of the Paris Agreement, the Applicants argue that Switzerland should "take the lead" and, in order to shoulder its fair share of the global effort, that it should apply the highest possible level of ambition in reducing its emissions (see Additional Submission, para. 56).

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<sup>23</sup> DANIEL BODANSKY, *The Legal Character of the Paris Agreement*, p. 6.

<sup>24</sup> BODANSKY, *supra.*, p. 1-2.

<sup>25</sup> BODANSKY, *supra.*, p. 1-2.

<sup>26</sup> BODANSKY, *supra.*, p. 7-8.

<sup>27</sup> Cf. JULIA HÄNNI, *Human Rights Protection as a result of Climate Change – Prerequisites and Challenges / Presented by the example of the ECHR*, in *EuGRZ* 2019, issue 1 -6, p. 4.

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90. The Government considers that standards of conduct such as those contained in articles 4.2, 2<sup>nd</sup> sentence and 4.3 of the Paris Agreement are not legal rules that require specific or specific means or measures to achieve a particular objective. The concept of “the highest possible level of ambition” on the other hand reflects a standard of conduct that the parties must comply with. This duty of due diligence in designing the NDCs is a means of assisting the Parties in structuring their respective responsibilities. In order to act swiftly, States must therefore take all appropriate measures in accordance with their capacities to progressively achieve the protection of the interests or rights concerned. In other words, each successive NDC must embody the highest level of ambition of one party – it must do its utmost to progressively achieve the objective of the Paris Agreement, i.e. to keep the global temperature rise well below 2 °C and to continue efforts to limit this rise to 1.5 °C.
91. In addition to the standards of conduct set out in the Paris Agreement, the standards of conduct resulting from the IPCC scientific reports should be taken into account<sup>28</sup>. The IPCC, or *Intergovernmental Panel on Climate Change*, which is based in Geneva and currently has 195 member states, is the United Nations body responsible for assessing the scientific aspect of climate change. The IPCC reports provide the scientific data necessary for States to be able to determine their mitigation measures so that the objective set out in Article 2 (a) of the Paris Agreement can be achieved<sup>29</sup>. The performance of States Parties to the UNFCCC is measured on the basis of those IPCC reports. The committee has already established five of them and has started its sixth evaluation cycle.
92. Finally, the general objective of the Agreement invoked by the Applicants of 2 °C or 1.5 °C (i.e. Article 2.1 (a)) is a temperature target, i.e. a general objective that does not impose quantitative restrictions on greenhouse gas emissions or a global carbon budget.
93. In summary, it should be acknowledged that, by ratifying the Paris Agreement, Switzerland has undertaken to meet a number of formal commitments. These are positive obligations and standards of conduct which, in the opinion of the Government, are likely to shed some light on the reasonable and appropriate measures that Switzerland must take to effectively protect the rights set out in Articles 2 and 8 of the Convention. However, Switzerland has not undertaken that the NDCs it has established and updated will be subject to international judicial review. The Paris Agreement does not contain any legally binding obligations to this effect. Article 14 limits itself to establishing every five years a global implementation review by the Conference of States Parties in order to assess the collective progress made in achieving its purpose and long-term goals, but does not create any external evaluation mechanism to assess the individual performance of each State Party. Thus, the Court cannot assign itself such a role – in a way establishing itself as a supreme environmental court – where the States Parties to the Paris Agreement have deliberately opted not to introduce one.

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<sup>28</sup> <https://www.ipcc.ch/languages-2/francais/>

<sup>29</sup> See HÄNNI, *supra.*, p. 10 and 12.

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c) *Legislative and administrative framework established by Switzerland*

94. Switzerland ratified the Paris Agreement on 6 October 2017, which entered into force for Switzerland on 7 November 2017. This agreement, like the Kyoto Protocol – which Switzerland ratified on 9 July 2003 – and its so-called “Doha” amendment, is aimed at implementing the UNFCCC. These three acts, from Kyoto to Paris, each cover a specific commitment period, i.e. 2008-2012 (Kyoto), 2013-2020 (Doha) and, as from 2021, the Paris Agreement envisages sustainable and flexible commitments per 5- or 10-year tranche, depending on the commitment of the State in question. At the time of the ratification of the Paris Agreement, Parliament confirmed Switzerland’s overall objective of reducing its emissions by less than 50% by 2030 compared with 1990 levels.
95. Switzerland has communicated its objectives for the first two periods and has achieved these objectives. For the Paris Agreement, it has just revised its commitment on the basis of the 2018 report of the Intergovernmental Group on Climate Change (IPCC)<sup>30</sup> to set it at less than 50% compared to 1990 by 2030<sup>31</sup>, while announcing its intention to achieve carbon neutrality by 2050. This objective is now reported to the Secretariat. At the time of signing the Paris Agreement, the Federal Council set a long-term target of a 70-85% reduction in greenhouse gas emissions by 2050. This objective was based on the IPCC conclusions that global warming should be limited to less than 2 °C by 2100 in order to avoid serious consequences for human beings and biodiversity. In 2018, the IPCC’s report showed that profound changes in ecosystems were to be expected from a warming of 1.5 °C and that the level of net zero greenhouse gas emissions was therefore to be achieved much earlier than the target date in effect up to now. On 28 August 2019, the Federal Council therefore decided that, by 2050, Switzerland must no longer be emitting more greenhouse gases into the atmosphere than can be absorbed by natural and artificial reservoirs. This new target is in line with the efforts to limit the rise in temperatures to 1.5 °C.
96. Switzerland first sent the [update of its NDC](#), in short format in February 2020, in accordance with the deadlines set out in the Paris Agreement. Switzerland then forwarded the updated and enhanced version of [Communiqués Complete and detailed description of its NDC](#) to the UNFCCC Secretariat in December 2020. The updated NDC meets the requirements of fairness and ambition ([Annex 2](#)). The updated and enhanced NDC is based on the new CO<sub>2</sub> Act adopted by the Swiss Parliament on 25 September 2020 (see section 22 supra), the preliminary draft of which had been subject to consultation within the meaning of the CPA and the measures and objectives of which have been proposed, taking account of the results of scientific research (see Federal Council Dispatch of 1 December 2017, section 1.3).<sup>32</sup> The target of reducing greenhouse gas emissions by 50% by 2030 was introduced in Article 3 (1) of the new CO<sub>2</sub> Act. Following a referendum, the Swiss people voted on that text in the referendum of 13 June 2021 and rejected the revision. Thus, the current CO<sub>2</sub> Act remains in force. The Federal Council will discuss the new options with all stakeholders.<sup>33</sup>
97. The objective of carbon neutrality for 2050 is set out in the “Long-term Climate Strategy of Switzerland”, which the Federal Council adopted on 27 January 2021 and which sets out the guidelines for climate policy up to 2050 (see section 17 supra).

<sup>30</sup> <https://www.ipcc.ch/sr15/>

<sup>31</sup> <https://unfccc.int> > Process and meetings > The Paris Agreement > NDCs > Nationally Determined Contributions > NDC interim registry > search “Switzerland.”

<sup>32</sup> [FF 2018,229 – Message on the total revision of the CO<sub>2</sub> Act for the period after 2020 \(admin.ch\)](#)

<sup>33</sup> Federal Council press conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, [13.06.2021 – BR press conference – YouTube](#)

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d) *Compatibility of Switzerland's commitments with the objective of the Paris Agreement*

98. The Applicants criticise the fact that Switzerland did not do its utmost to help prevent the global temperature from exceeding the target of 1.5 °C increase in warming (see Additional Submission, para. 57).
99. The Government considers it useful to bring to the attention of the Court that the following new facts have arisen after the filing of this application on 26 November 2020:
- On 9 December 2020, Switzerland formally submitted to the UNFCCC Secretariat the full communication on its NDC. The updated and enhanced NDC represents progress in several areas:
    - o an increase in the NDC from -50% by 2030 to *less than* -50% by 2030 compared to 1990 levels, so that this is now a threshold;
    - o an increase in the indicative greenhouse gas emission reduction target to zero net emissions by 2050 (compared to the previous target of below 70-85% by 2050 compared to 1990);
  - On 27 January 2021, the Federal Council adopted Switzerland's long-term climate strategy (see section 17 *supra*). Switzerland thus has a clear roadmap for achieving its objectives.
  - On 13 June 2021, the people voted in a referendum on the new CO<sub>2</sub> Act (see 22 *supra*) and rejected the revision (51.6% no, 48.4% yes). In the view of the Federal Council, the rejection of the revision is not a "no" to climate protection. It is a no to the new CO<sub>2</sub> Act, on which the Swiss people voted. Discussions in the weeks leading up to the vote have shown that many people want to protect the climate, but not in this way and not with this law. The Federal Council has understood this message. It is aware that it must act quickly. In the short term, the Federal Council wishes to extend the uncontested legislation. In the medium term, Switzerland will have to find solutions and the Federal Council will discuss options with all stakeholders. In addition, the Federal Council is making progress with the expansion of renewable energies.<sup>34</sup> The outcome of the vote does not change the objectives submitted to the UNFCCC Secretariat on 9 December 2020, i.e. a reduction of at least 50% by 2030 and zero net emissions by 2050 (see section 96 *supra*). Switzerland will certainly not withdraw from the Paris Agreement because of this result, but will find new solutions to achieve the objectives.<sup>35</sup> On 21 June 2021, a parliamentary initiative aimed at extending the reduction target under the CO<sub>2</sub> Act was submitted<sup>36</sup>
100. This shows that Switzerland's climate policy is not rigid, but that it is able to adapt to new scientific recommendations and continuously increase the level of its ambitions. This dynamic thus meets the requirement of "progression" expected from States (cf. Art. 3 and Art. 4.3 of the Paris Agreement). More specifically, with regard to the compatibility of Switzerland's NDC with the objective of the Paris Agreement, the Government wishes to highlight the following points:

<sup>34</sup> Federal Council press conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, [13.06.2021 – BR press conference – YouTube](#)

<sup>35</sup> *Ibid.*

<sup>36</sup> [Parliamentary Initiative 21.477 "Extension of the CO<sub>2</sub> Act Reduction Target"](#)

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101. According to the 2018 IPCC report “Mitigation Pathways compatible with 1.5 °C”, the emission reduction range that is compatible with the 1.5 °C target is 45%, or more precisely 45-60% by 2030 compared to 2010<sup>37</sup>.
102. Switzerland has stabilized its emissions by 2010 compared with 1990 levels. In addition, it updated and strengthened its NDC in December 2020 (see section 96 supra) and the Federal Council recommended the adoption of the new CO2 Act, which aimed to reduce the CO2 emissions by at least 50% by 2030. It has therefore demonstrated its willingness to be within the IPCC range to help stabilise at 1.5 °C.
103. With regard to the rejection of the new CO<sub>2</sub> Act by a vote, it should first be recalled that democracy, the rule of law and human rights are important pillars of the state. The rejection of the new CO<sub>2</sub> Act does not mean that the Swiss people do not want to fight climate change resolutely. Rather, the tools provided for in the draft new law are what voters have rejected. Despite the negative result of the referendum on the new CO<sub>2</sub> Act, the Swiss climate target set in the Swiss NDC remains unchanged. Only the measures aimed at implementing the objective will need to be reviewed. Thus, the Federal Council will quickly seek new solutions.<sup>38</sup>
104. In 2019, Switzerland also strengthened its long-term climate target in order to comply with the IPCC’s recommendations to keep the temperature rise below 1.5 °C by 2100.<sup>39</sup>
105. Finally, it should be borne in mind that the number of Swiss citizens has increased from 6.67 million in 1990 to 8.55 million in 2019, while per capita emissions have been reduced by a third during this period<sup>40</sup>, so that per capita emissions in Switzerland are now below the global average. In addition, the costs of reducing emissions are high in Switzerland due to the limited availability of profitable short-term mitigation potentials: Energy production in Switzerland is almost carbon-free and there is little heavy industry. The potential for reducing emissions lies mainly in the housing and transport sectors. These sectors are typically characterised by long processing periods. However, for reasons of fairness, it is important to recognise past efforts and reward pioneering countries.
106. In summary, under the sole legally binding obligation of the Paris Agreement on mitigation, Switzerland is complying with its commitment by submitting its NDC within the given deadline. At the level of standards of conduct, including those resulting from the IPCC reports, it has, on the one hand, made every effort to integrate its NDC into its national legislation (Art. 4.2, 2nd sentence) and to revise its objective in time to reflect its highest level of ambition (Art. 4.3). In its recent communication, it stated that, domestically, its emission reductions by 2030 will mainly be achieved, which will further strengthen Switzerland’s transition to a low-carbon economy. Given Switzerland’s low greenhouse gas intensity today, the NDC represents a high level of ambition for 2030.

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<sup>37</sup> See page 116 of the report SR15\_Chapter2\_Low\_Res.pdf (ipcc.ch): “Below-1.5°C and 1.5°C-low-OS pathways combined show a decline in global net anthropogenic CO<sub>2</sub> emissions of about 45% from 2010 levels by 2030 (40-60% interquartile range).”

<sup>38</sup> Federal Council press conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, [13.06.2021 – BR press conference – YouTube](#)

<sup>39</sup> Federal Council Communiqué of 28 August 2019, [The Federal Council aims at climate neutrality in Switzerland by 2050 \(admin.ch\)](#)

<sup>40</sup> [Climate indicator \(admin.ch\)](#)

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107. In view of the above, the Government considers that the measures put in place by Switzerland are compatible with the objectives of the Paris Agreement.

e) *Compatibility of Switzerland's commitments with Articles 2 and 8 of the Convention*

108. In environmental and industrial matters, the Court has stressed on many occasions that it cannot substitute its own point of view for that of local authorities as to the best policy to be adopted, so that it has always recognised a “great” margin of appreciation for states, particularly in difficult social and technical areas (*Hatton et al.*, *supra.*, para. 100-101; *Tătar*, *supra.*, para. 108). It is in view of this broad margin of appreciation that the Court limited itself, in certain cases, to verifying that the national authorities had not committed a “manifest error of judgement” in their choice of the means to establish a fair balance between competing interests (Judgment *Hardy and Maile v United Kingdom*, No. 31965/07, 14 February 2012, para. 222 and 1; *Fadeïeva*, *supra.*, para. 102 and 105).
109. In this case, the Government emphasises that Switzerland has put in place a range of measures to reduce CO<sub>2</sub> emissions (cf. section VI.D.c) *supra*) and that these measures are compatible with the objective of the Paris Agreement (cf. section VI.D.d) *supra*). Furthermore, the Government considers that the range of mitigation measures to reduce CO<sub>2</sub> emissions, as reflected mainly in the CO<sub>2</sub> Act currently in force (see section 22 *supra*), the new CO<sub>2</sub> Act, which was rejected by the Swiss people in the referendum on 13 June 2021, as well as the new solutions to be found, falls within Switzerland's margin of appreciation. Since Switzerland has fulfilled and undertakes to fully fulfil the commitments it has entered into by ratifying the Paris Agreement, it has not exceeded and will not exceed its margin of appreciation (see section VI.D.d) *supra*). There is no justification for the Court to substitute its own view for the views of the government – and the Swiss people – on how to combat global warming.
110. With regard to the rejection of the new CO<sub>2</sub> Act, the Government stresses that it did recommend that the Swiss people accept it in the referendum of 13 June 2021.<sup>41</sup> However, the Swiss people did not follow this recommendation, so the Federal Council will soon have to find other ways of protecting the climate (see section 99 *supra*). In this context, it should be recalled that the choice of means to combat global warming falls within the margin of appreciation of the state. In view of the complexity of the task, this choice is difficult and has to respond to many different interests. Climate protection measures may restrict the freedoms of individuals and the most sensible solutions need to be found, after balancing all the interests involved. Switzerland and its people are better placed than the Court to make this choice. The Government is fully aware that it needs to act swiftly to ensure climate protection.<sup>42</sup> However, it is not too late and there is still time to make this choice (cf. [SCD 146 I 145](#), at 5). The measures taken and the discussions conducted show that there is a strong will to protect the climate in Switzerland (see section 96 *supra*).

<sup>41</sup> [CO<sub>2</sub> Act \(admin.ch\)](#) > Explanations of the Federal Council – referendum of 13.06.2021

<sup>42</sup> Federal Council press conference of 13 June 2021, Federal Councillor Simonetta Sommaruga, [13.06.2021 – BR press conference – YouTube](#)

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111. With regard to the objectives of the new CO<sub>2</sub> Act – which the Federal Council and Parliament recommended adopting in the referendum of 13 June 2021 – and the updated UN-FCCC Secretariat on 9 December 2020 (see section 98 - 99 *supra*), i.e. a reduction of at least 50% by 2030 and zero net emissions by 2050, it should be emphasised that they do not differ significantly from what the Applicants have requested of the Federal Council in their third Legal Request. In fact, the Applicants demand a reduction in Switzerland's greenhouse gases by at least 50% by 2030 compared with 1990 levels. They therefore appear to assume that such a reduction is compatible with Switzerland's positive obligations under the Convention.
112. With regard to the precautionary principle (cf. question 2.3 of the Court and Additional Submission of the Applicants, p. 18), it should be noted that the status of this principle under international law is not clear and whether the principle is established as a rule of international law or not is controversial. Moreover, even if the Court refers to this in some judgments (cf. judgment *Tătar v. Romania*, no 67021/01, 27 January 2009, para. 109 on the precautionary principle), this principle and its possible implications for human rights are not consolidated in the case law of the Court in application of the Convention (in this sense, see dissent of Judge Pettiti and six colleagues, final paragraph, in *Balmer-Schafroth et al. v. Switzerland, supra*). The reference to the precautionary principle in the *Tătar* judgment was thus very clearly linked to the fact that the respondent state failed to take measures after the environmental accident of 30 January 2000. It should also be recalled that in the *Hardy and Maile* case, the Court disregarded the precautionary principle even though the Applicants had expressly requested that Article 8 of the Convention be interpreted in the light of this principle (*Hardy and Maile supra.*, para. 186).
113. The precautionary principle may make it possible to shed some light on the positive obligation of States under Articles 2 and 8 of the Convention. However, it is too vague for it to be able to really direct decision-making in substance. For example, the level of risk of serious or irreversible disturbances or the recommended threshold for determining whether there is absolute scientific certainty are not established with sufficient clarity, even by using the precautionary principle. In addition, the precautionary principle is not sufficient to give specific contours to the obligation of states not to delay the adoption of measures, as it is too general for this.
114. If the Court should nevertheless take the precautionary principle into account in the present case, the Government is of the opinion that Switzerland has fully complied with the requirements of this principle. It has taken precautionary measures to predict, prevent or mitigate the causes of climate change and to limit its adverse effects. It has never used the lack of absolute scientific certainty as a pretext for delaying the adoption of such measures. It has anticipated the foreseeable consequences of climate change in good time (see section 17 *supra*) and regularly adapts its targets according to the latest scientific data (see section 95 *ff supra*).
115. With regard to the principle of intergenerational equity, the Government stresses that this principle is not established as a rule of international law. In addition, the Applicants have not invoked this principle, which concerns *inter alia* the interests of future generations.

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It notes that the Applicants are a part of the present generation. They are not entitled to assert the rights of future generations before the Court, nor are they able to do so. The status of victim can only belong to existing people and not to future generations. In addition, the present proceedings concern the question of whether or not the rights of the Applicants guaranteed by the Convention have been violated. The Government considers that the principle of intergenerational equity cannot help to answer this question, such that it is irrelevant in the present case.

116. If the Court should nevertheless take into account the principle of intergenerational equity in the present case, the Government is of the opinion that Switzerland has fully complied with the requirements of this principle. The measures taken by Switzerland to protect the climate respect the interests of present and future generations in an equitable manner (cf. Section 94 et seq. supra).
117. Finally, it goes without saying that Switzerland alone cannot prevent or slow down global warming. It should be noted, however, that Switzerland takes various measures to protect the population from heat. For example, the Federal Office of Public Health (FOPH), in collaboration with the FOEN, is developing a knowledge base and preventive measures to protect the population from ever-increasing heatwaves.<sup>43</sup> [The 2021 Toolkit for Heat Measurement](#). The report, which was developed as part of the implementation of the federal government's "Adaptation to Climate Change" action plan, lists options for action to prevent heat-related health problems, as well as a number of concrete recommendations, and presents actions that have already been implemented by other actors (mainly in the health sector). It mentions, for example, the existing heatwave alert systems (p. 29 s) and contains a compilation of cooled / air-conditioned locations where people can drop in and refresh themselves during heatwaves (p. 37). In addition, cities are taking measures to reduce heat in the city. For example, every summer, the City of Geneva is setting up [a heat-wave plan](#), for people over the age of 75. Elderly people have the opportunity to register with the Social Service in order to benefit from follow-up during hot periods. In the city of Zurich, there is, among other things, a heat hotline ("Hitze-Telefon") for the aged, and the city takes measures to reduce heat (cf. [Heat Tips – City of Zurich \(city-zuerich.ch\)](#) and [City of Zurich press release of 12 May 2020](#) "Weniger Hitze in der Stadt").
118. In view of the above, the Government considers that Switzerland has fulfilled its positive obligations under Articles 2 and 8 of the Convention.
  - f) *Conducting appropriate surveys and studies and effective public participation*
119. In accordance with its case law (cf. 72 ff supra), the Court holds that the decision-making process requires States Parties to the Convention to carry out appropriate investigations and studies where complex environmental and economic policy issues exist. In any event, the existence of a serious health risk imposes a positive obligation on those States to assess such a risk by means of such surveys and studies. At international level, the Court refers in particular to the Aarhus Convention of 25 June 1998 which provides for access to information, public participation in decision-making and access to justice in environmental matters.

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<sup>43</sup> [Human Health \(admin.ch\)](#)

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The Government notes, however, that the Aarhus Convention does not specifically provide for the inclusion of scientific studies as part of public participation. It also recalls that the Aarhus Convention only entered into force for Switzerland on 1<sup>st</sup> June 2014 (cf. 20 *supra*). Switzerland was thus not yet bound by the provisions of the Aarhus Convention at the time the current CO<sub>2</sub> Act and its implementing provisions came into force (see Section 21 *supra*).

120. In Switzerland, the legislative and decision-making process is closely monitored by the competent Federal Offices. This is also the case in the area of combating global warming, where it is essential that decisions are based on the best scientific knowledge. In particular, the existing procedure ensures that specialised experts are integrated into the legislative process. In practice, this involves drafting the legal provisions on the basis of specialist sources: the Federal Council Dispatch of 1 December 2017 on the total revision of the CO<sub>2</sub> Act for the period after 2020 ([FF 2018 229](#)), as well as the [Explanatory Report on the Ordinance on the Reduction of CO<sub>2</sub> Emissions](#)<sup>44</sup>, refer in particular to the IPCC reports of 2014 and 2018, the reports of the Organisation for Economic Cooperation and Development (OECD) in connection with the use and provision of financial resources for climate protection, as well as the strategic recommendations of the [“Consultative body on climate change \(OcCC\)”](#). The OcCC was established in 1996 by DETEC and the Federal Department of Home Affairs. Its mandate was renewed in 2018. The OcCC’s main task is to make recommendations of a strategic nature on climate change issues and Swiss climate policy from a scientific point of view to politicians and the administration. In addition, the above-mentioned Federal Council Dispatch refers to the data and information provided by the [National Centre for Climate Services \(NCCS\)](#). The NCCS develops and provides climate services, such as the provision of data, information and options for action, as well as support for their use and interpretation. All documents, declarations or expert opinions must be made available to the general public if they are mentioned in the above explanatory report.
121. More generally, there are other ways in Switzerland for the public to participate in the legislative process, in particular through the CPA. The CPA provides for broad public participation in decision-making procedures (Art. 3 CPA). The consultation procedure applies in particular to amendments to the Federal Constitution as well as draft legislation or ordinances. Dispensing with the consultation procedure is only possible in special cases and if it is objectively justified (Art. 3a CPA). Anyone and any organisation may participate in a consultation procedure and submit an opinion. Scientific studies and contributions may also be submitted. The competent authority must assess the results of the consultation and summarise them in a report (Art. 8 para. 2 CPA). It is then made available to the public (Art. 9 CPA).
122. Finally, according to the principle of transparency enshrined in art. 6 (1) of the Federal Act of 17 December 2004 on the Freedom of Information in the Administration (FOIA)<sup>45</sup>, any person has the right to inspect official documents and to obtain information about the content of official documents.

<sup>44</sup> [RS 641.711 – Ordinance of 30 November 2012 on the Reduction of CO<sub>2</sub> Emissions \(CO<sub>2</sub> Ordinance\) \(admin.ch\)](#)

<sup>45</sup> [SR 152.3 – Federal Act of 17 December 2004 on Freedom of Information in the Administration \(Freedom of Information Act, FOIA\)](#)

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Thus, all studies and other surveys on climate issues produced or held by the Federal Administration are in principle available to the public upon request.

123. In view of the above, the Government is of the opinion that the legislative and decision-making process that led to Switzerland's measures to reduce greenhouse gas emissions is characterised by a very high degree of openness and full transparency. It also allows for the systematic inclusion of scientific surveys and studies as well as a very broad participation of all interested parties. On 13 June 2021, the Swiss people voted on the new CO2 Act when the referendum was held.
124. A fair balance has thus been struck between the different competing interests at stake, in accordance with the requirements arising from the relevant case law of the Court in the light, in particular, of the principles set out in the Aarhus Convention.

*g) Conclusion*

125. It follows from the above that Switzerland has fulfilled its obligations under the guarantees of the Convention invoked by the Applicants. It has adopted appropriate regulations and enacted adequate and sufficient measures to achieve the objectives of combating global warming. Consequently, the Government invites the Court to declare the objection concerning Articles 2 and/or 8 of the Convention inadmissible on the grounds that it is manifestly unfounded.

**VII. Has there been a violation of the right of access to an impartial tribunal within the meaning of Article 6 of the Convention?**

**A. Is this provision applicable in the civil context?**

*a) Overview of the relevant principles*

126. According to the case law of the Court, “ (...) for Article 6 § 1 in its “civil” limb to be applicable, there must be a dispute (“contestation” in the French text) over a “civil right” which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question; tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (...)” (*Taşkin, supra.*, para. 130; *Balmer-Schafroth et al. v. Switzerland, supra.*, para. 32).

*b) Application of these principles to the present case*

127. In the present case, the Federal Supreme Court noted that the Applicants relied on the right to life pursuant to Article 10 (1) of the Swiss Constitution in order to derive a subjective claim to have the alleged omissions of the State stopped and to implement the measures requested by them. The Federal Supreme Court held that the Applicants' constitutional rights were not affected by the alleged omissions in a legally relevant manner ([SCD 146 I 145](#), at 6.2). Indeed, the Applicants' rights are not affected with the degree of intensity required arising from Article 10 (1) Swiss Const. and Articles 2 and 8 of the Convention. They do not have the status of a victim within the meaning of Article 34 of the Convention (cf. [SCD 146 I 145](#), at 5.4). Their application must be classified as an *actio popularis* and is inadmissible pursuant to Article 25a APA, which only guarantees the protection of individual rights (cf. [SCD 146 I 145](#), at 5.5). In view of the above, the Government considers that the Applicants cannot justifiably claim that there is a dispute with respect to a right recognised under domestic law. Consequently, they cannot derive the above-referenced claim from Article 10 (1) Swiss Const. and have no subjective right to a finding of the alleged illegality of the alleged omissions (cf. [SCD 146 I 145](#), at 6.2).

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128. Furthermore, the Federal Administrative Court considered that the actions and other measures requested by the Applicants, such as the opening of the preliminary phase of the legislative procedure and the provision of information to the public, are not such as to contribute immediately to the reduction of CO<sub>2</sub> emissions in Switzerland. The actions and other measures requested by the Applicants are therefore not capable of reducing extreme heat-waves.
- Under these circumstances, it cannot be said that the dispute before DETEC was genuine and serious and that the outcome of the proceedings would have been directly relevant to the law in question. Consequently, DETEC was not required to consider the Applicants' request pursuant to Article 6 (1) of the Convention (cf. Decision of the FAC A-2992/2017 of 27 November 2018, para. 8.3 and 8.4, Annex 17 to the Application).
129. The Government agrees with the decisions and considerations of the domestic courts (cf. 127-128 supra). It further emphasises that the Applicants have not established a direct link between the alleged omissions and the rights invoked (cf. 38 - 50 supra). Moreover, they have not identified or demonstrated that there is a serious and, above all, immediate threat to the rights they have invoked. Furthermore, the actions requested are not such as to contribute immediately to the reduction of CO<sub>2</sub> emissions in Switzerland. Consequently, neither the threat nor the actions sought present the degree of probability, which makes the outcome of the dispute directly decisive for the rights invoked by the Applicants. The link between the alleged omissions and the rights invoked by the Applicants is therefore too tenuous and far removed.
130. Finally, the Government recalls that Article 6 of the Convention does not guarantee the right of access to a court having jurisdiction to invalidate or replace a law emanating from the legislative authority (Guide on Article 6 of the European Convention on Human Rights, Right to a Fair Trial [civil law], 31 December 2020, para. 90). In the present case, the Applicants are in fact seeking to obtain the replacement of the CO<sub>2</sub> Act currently in force by a law providing for stricter measures. It is therefore the general interest of climate protection that is the subject and issue of the dispute and not a dispute over a civil right of the Applicants (cf. *Association Greenpeace France v. France* (Dec.), no 55243/10, 13 December 2011).
131. In view of the above, the Government considers that Article 6 of the Convention is not applicable in the present case. It therefore calls on the Court to declare this application inadmissible.
- B. Did the Applicants have effective judicial remedies at their disposal to assert their civil rights (see, for example, *Nait-Liman v. Switzerland* [GC], no. 51357/07, para. 113, 15 March 2018)?
132. If the Court is of the opinion that Article 6 of the Convention is applicable, the Government takes the following position on the issue of 3.2:
133. The right to a fair trial, guaranteed by Article 6 para. 1 of the Convention, must be interpreted in the light of the principle of the primacy of the law, which requires the existence of an effective legal remedy enabling civil rights to be asserted (see, among others, *Ali Riza v. Switzerland*, no 74989/11, para. 72; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no 5809/08, para. 126, ECHR 2016, *Eşim v. Turkey*, no 59601/09, para. 18, 17 September 2013, and *Běleš et al. v. Czech Republic*, no 47273/99, para. 49, ECHR 2002 IX). Every person is entitled to have a court hear any dispute relating to their civil rights and obligations.

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Thus, Article 6 (1) of the Convention enshrines the right to a court, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see, among others, *Howald Moor et al. v. Switzerland*, nos. 52067/10 and 41072/11, para. 70, 11 March 2014, and *Golder v. United Kingdom*, 21 February 1975, para. 36, no 18).

134. However, the right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. That being stated, those limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. In addition, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Nait-Liman v. Suisse* [GC], no. 51357/07, 15 March 2018, para. 114 and 115; *Ali Riza*, supra., para. 73 and cited references). Furthermore, the limitations applied are only compatible with Article 6 para. 1 of the Convention if they pursue a legitimate purpose and if there is a reasonable proportionality between the means employed and the intended purpose (*Ali Riza*, supra., para. 74 and cited references).
135. In general, the Government emphasises that it is open to any person to contact a Swiss authority at any time in order to make a request to that authority and to obtain a decision from the authority seised. In Switzerland, the FOEN and the SFOE have a duty to develop and prepare legislative and other measures within the framework of Switzerland's long-term climate strategy. Both offices are subordinate to DETEC. As a general rule, any request for information or for a decision, any suggestion or, more broadly, any correspondence concerning environmental protection and, in particular, global warming, must be addressed to DETEC. The latter must issue a decision within the meaning of Article 5 APA, if applicable in conjunction with Article 25a APA. Such decisions may then be appealed to the Federal Administrative Court pursuant to Article 31 of the Federal Administrative Court Act of 17 June 2005 (FACA)<sup>46</sup>. Judgments handed down by the Federal Administrative Court in this area may then be appealed to the Federal Supreme Court pursuant to Articles 82 (a) and 86 (1) (a) FSCA.
136. The Swiss courts are regularly seized of appeals, from individuals or associations, concerning issues relating to risks to the environment arising from human activities (for nuclear energy, see, for example, the SCD [139 II 185](#), decision of the Federal Supreme Court [2C 206/2019](#) of 25 March 2021 or SCD [A-5762/2012](#) of 7 February 2013; for air protection, see e.g. [FAC 2009/1](#)). It should be noted that federal administrative procedure is not particularly formalistic. Pursuant to Article 12 APA, it is mainly governed by the investigative principle, according to which the authorities establish the relevant facts *ex officio*. It also requires the authorities to apply the law *ex officio* (cf. art. 62 (4) APA). Furthermore, administrative procedure does not impose an obligation to be represented by counsel, so that it is cheaper for the parties.

<sup>46</sup> [SR 173.32 – Federal Administrative Court Act of 17 June 2005 \(FACA\)](#)

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Generally, the procedural costs charged to the unsuccessful party are – outside the realm of monetary disputes – rather modest and, in exceptional cases, may even be fully waived (art. 63a). 1 APA). Finally, the administrative procedure expressly provides for the possibility of obtaining full or partial legal aid if the party does not have sufficient resources and its prayers for relief do not lack any prospect of success from the outset (Art. 65 APA).

137. The Government emphasises that in the present case, the Applicants have benefited from access to two judicial instances. They appealed to the FAC and the Federal Supreme Court, both of which carefully examined the case and issued clearly reasoned rulings (cf. 9 s 11 supra).
138. Nevertheless, the Applicants allege that Article 6 of the Convention has been violated because the domestic courts have upheld the decision of DETEC not to hear the case and have not examined the merits of the case (cf. Additional Submission, para. 42 et seq.). Their Application under Article 6 of the Convention is therefore a fourth instance complaint. It should be recalled, however, that the Court is not a court of fourth instance.
139. In order for an authority to be able to consider an application made on the basis of Article 25a APA, several conditions must be met. According to that provision, who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it refrains from, discontinues or revokes unlawful acts, rectifies the consequences of unlawful acts or confirms the illegality of such acts (para. 1). The authority shall decide by way of a ruling. (para. 2). According to the Federal Supreme Court, the concept of a real act within the meaning of Article 25a APA must be interpreted broadly. It includes not only individual and concrete actions, but also general and abstract actions (cf. [SCD 146 I 145](#), at 4.2). In addition to the wording of Article 25a APA, the omissions of the authorities may also be challenged. An omission by state authorities may only be unlawful if there is a specific obligation for the authorities to act. The right to obtain a decision pursuant to Article 25a APA does not exist if the legislator has intentionally excluded legal protection against a real act or if sufficient legal protection is possible by other means (*subsidiarity*). Delineation from the *actio popularis* requires a careful analysis of whether the Applicant is more affected than the population in general (cf. [SCD 146 I 145](#), at 4.1 with references). The existence of rights under Article 25a APA presupposes that the person making the request is to a certain extent affected in his or her personal legal sphere. In order to do so, the infringement of personal rights must be of a minimum intensity (cf. [SCD 146 I 145](#), at 4.1 and 4.4 with references). Article 25a APA defines the interest in legal protection specific to the dispute (*streitlagenspezifische Rechtsschutzinteresse*) by an objective and a subjective standard: on the one hand, in objective terms, the substantive act must affect rights and obligations; on the other, in subjective terms, the Applicant must assert a legitimate interest in the decision being issued. The two criteria, even if they go in the same direction, must be carefully distinguished (cf. [SCD 146 I 145](#), at 4.4 with references).
140. Generally speaking, the requirements laid down by procedural law for an authority to enter into proceedings serve to ensure the proper administration of justice. The requirement that the Applicant must be affected to a certain extent in his or her personal legal sphere arises from the fact that Article 25a APA is an individual means of legal protection.

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This allows a delimitation from the *actio popularis*. This requirement is widely acknowledged and also applied by the Court. It also contributes to respect for the separation of powers (cf. Section 141 s *infra*). It cannot be considered that it restricts access to a court in such a way that the substance of the individual's right to a court would be affected. In addition, there is a reasonable relationship of proportionality between this requirement and the objectives pursued.

141. Despite the broad interpretation of the notion of a substantive act within the meaning of Article 25a APA, the question may arise as to whether – as in the present case – a series of state measures may be required in a specific area on the basis of Article 25a APA. According to Swiss constitutional law, requests to give a specific form to current policy areas are generally made through democratic mechanisms (at 4.3). The political rights pursuant to Articles 34 and 136 of the Federal Constitution are available to citizens for this purpose. These rights include the right to initiate a popular initiative for a total or partial revision of the Federal Constitution (Art. 138 et seq. Swiss const.) and the right of petition (Art. 33 Swiss const.). In addition, any member of the Federal Assembly, any parliamentary group, any parliamentary committee or any canton may submit an initiative to the Federal Assembly (Art. 160 para. 1 Swiss const.). In addition, the members of both Councils and those of the Federal Council may submit motions relating to an item of business under discussion (Art. 160 para. 2 Swiss const.).
142. In view of the above, it must be assumed that the requirement that the person submitting a motion must be affected to a certain extent in his or her personal legal sphere contributes to compliance with the separation of powers and the principle of subsidiarity. In Switzerland, it is not up to the judiciary to make political decisions. This task resides with the legislative and executive powers. By virtue of Article 190 Swiss const., the Federal Supreme Court is, in any event, not able to order a correction or tightening of the requirements of the CO<sub>2</sub> Act or emission-reduction measures. As we saw in the referendum on 13 June 2021, the issue of climate policy and the necessary implementing measures is complex and it is difficult to strike the balance needed to reach a majority on these points.
143. The careful examination carried out by the Federal Supreme Court with regard to the formal criterion of the interest in legal protection, as well as the characteristics of Switzerland's own political system, show that courts cannot easily become involved in the issue of climate change. It is certainly not up to the courts themselves to decide what measures to take. In the opinion of the Government, it was therefore rightly the view of the Federal Supreme Court that the Applicants' concerns should not be addressed by judicial, but rather by political means. Their appeal did not serve the purpose of individual legal protection, but was aimed at obtaining an abstract review of the current climate protection measures and those planned for the period up to 2030. This factor led the FSC in particular to classify the appeal as an *actio popularis*, which is incompatible with the means of individual legal protection (cf. [SCD 146 I 145](#), at 5.5 and 8).
144. In addition, it should be recalled that, according to the FSC, there is still a certain period of time to prevent global warming and to achieve the Applicant's objectives by the political means and democratic instruments available in Switzerland (cf. [SCD 146 I 145](#), at 5.3 and 5.5). In these circumstances, it is simply unacceptable to attempt to circumvent and extricate oneself from the democratic debate.

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145. Art. 25a APA allows individuals to challenge the omissions of the authorities, provided, of course, that the conditions laid down in this provision are met. Those conditions serve legitimate purposes, namely the proper administration of justice, the effectiveness of domestic judicial decisions by preventing *actio popularis* and guaranteeing individual legal protection, or indeed the separation of powers. However, the conditions have not been satisfied in the present case. Since the judgments of the FAC and the FSC are neither arbitrary nor manifestly unreasonable, it is not up to the Court to challenge their conclusions.
146. In view of the above, the Government considers that the Applicants had at their disposal an effective legal remedy enabling them to assert their civil rights. It therefore invites the Court to declare the Application concerning Article 6 of the Convention inadmissible on the grounds that it is manifestly ill-founded.

**VIII. Did the Applicants have an effective remedy at their disposal within the meaning of Article 13 of the Convention concerning the alleged violations of Articles 2 and 8?**

A. Overview of the relevant principles

147. According to the consistent case law of the Court, Article 13 requires an domestic remedy only for applications which can be considered “arguable” under the Convention (...).“ (*Athanassoglou et al. v Switzerland judgment*, supra., para. 58). In the *Athanassoglou et al. v. Switzerland* case, the Court found that “[t]he applicants' complaint under Article 13, like that under Article 6 § 1, was directed against the denial under Swiss law of a judicial remedy to challenge the Federal Council's decision. The Court found that the connection between that decision and the domestic-law rights to protection of life, physical integrity and property invoked by the applicants was too tenuous and remote to attract the Application of Article 6 § 1 (...). The reasons for that finding likewise lead to the conclusion, on grounds of remoteness, that in relation to the Federal Council's decision as such no arguable claim of violation of Article 2 or Article 8 of the Convention and, consequently, no entitlement to a remedy under Article 13 have been made out by the applicants. In sum, as in the *Balmer-Schafroth et al.* case the Court finds Article 13 to be inapplicable.” *Athanassoglou et al. v Switzerland*, supra., para. 59).
148. In addition, the Court recalled that the safeguards of Article 6 § 1 are in principle stricter than, and absorb, those of Article 13 (cf. judgment *Ullens de Schooten and Rezabek v Belgium*, nos. 3989/07 and 38353/07, 20 September 2011, para. 52).

B. Application of these principles to the present case

a) *Applicability of Article 13 of the Convention*

149. The Government notes that the measures requested by the Applicants are largely similar to the preliminary work under the legislative procedure (cf. [SCD146 I 145](#), at 4.3.). In fact, the Applicants are seeking to have the CO<sub>2</sub> Act currently in force replaced by a new law providing for stricter measures. In this context, the Government recalls that Article 13 of the Convention does not go so far as to require States to put in place an appellate remedy whereby individuals may denounce, before a national authority, the laws of a Contracting State as being contrary to the Convention or contrary to equivalent national legal standards (Guide on Article 13 of the European Convention on Human Rights, Right to an effective remedy, 30 April 2021, para. 66).

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Article 13 of the Convention also does not allow a general policy as such to be challenged (*Hatton et al. v. United Kingdom* [GC], 2003, para. 138). Therefore, the Government invites the Court to declare the Application of a violation of Article 13 of the Convention incompatible *ratione materiae* with the Convention.

150. In addition, the Government refers to the recitals concerning the applicability of Article 6 of the Convention (ch. 127 *supra*). It emphasises that the Applicants cannot defensibly claim that there is a dispute over a right recognised under domestic law. They have not demonstrated that there is a serious and, above all, immediate threat to the rights invoked. Their rights under Articles 2 and 8 of the Convention are not affected in a legally relevant manner. Furthermore, the actions requested are not such as to contribute immediately to the reduction of CO<sub>2</sub> emissions in Switzerland. Consequently, neither the threat nor the actions sought present the degree of probability which makes the outcome of the dispute directly decisive for the rights invoked by the Applicants. The link between the alleged omissions and the rights invoked by the Applicants is therefore too tenuous and far removed. Therefore, Article 13 of the Convention is not applicable in this case. Thus, the Government invites the Court to declare the complaint concerning Article 13 of the Convention inadmissible.

*b) Existence of an effective remedy within the meaning of Article 13 of the Convention*

151. The Applicants allege that their right to an effective remedy has been infringed because the national authorities have not examined the substance of their complaint (see application form, p. 9).

152. The Government recalls that in this case, the Applicants had the opportunity to appeal to the FAC and the Federal Supreme Court and thus benefited from two levels of appellate review (cf. 135 *et seq.*). It also emphasises that states may provide rules governing the conditions of admissibility of an appeal. In this case, the statutory requirement that the Applicants's rights must be affected with a certain degree of intensity does not render their appeal ineffective (see Section 139 *et seq. supra*).

153. The Applicants also had - and still have - the possibility of bringing liability proceedings against the Swiss Confederation on the basis of the Federal Act on the Liability of the Confederation, the members of its Authorities and Civil Servants (FALC)<sup>47</sup> and of seeking, in this context, compensation for the harm they believe they have suffered as a result of the global warming allegedly caused by the authorities' failure to act. This legal remedy would have enabled them – and would still allow them now – to obtain a possible negative decision that would have been – or might be – issued by the competent authority examined by the FAC and then, if necessary, by the Federal Supreme Court. In the context of such liability proceedings, complaints of violation of the Convention may be made and submitted to the review of the courts. In view of the above, the Government considers that the Applicants had at their disposal, by means of a combination of existing remedies, an effective remedy within the meaning of Article 13 of the Convention concerning the alleged violations of Articles 2 and 8 of the Convention.

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<sup>47</sup> [SR 170.32 – Federal Act of 14 March 1958 on the Liability of the Confederation, the Members of its Authorities and Civil Servants \(Liability Act, FALC\) \(admin.ch\)](#)

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Thus, it invites the Court to declare the complaint concerning Article 13 of the Convention inadmissible on the grounds that it is manifestly ill-founded.

## **IX. Conclusions**

On the basis of the above considerations, the Government of Switzerland invites the Court to:

- declare application no. 53600/20 *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland* inadmissible as a matter of principle
  - for failure to comply with the six-month period;
  - for incompatibility *ratione personae* due to the Applicant association's lack of victim status;
  - for incompatibility *ratione personae* due to lack of victim status of the Applicants nos. 2-5 with regard to their complaints concerning Articles 2 and 8 of the Convention;
  - for incompatibility *ratione materiae* with the provisions of the Convention;
  - because it is manifestly ill-founded.
  
- In the alternative, to say that there has been no breach of the guarantees invoked by the Applicants.

Yours faithfully,

Federal Office of Justice (FOJ)

Signed digitally by  
Chablais Alain KOEDXK  
Bern, 2021-07-16 (with time  
stamp)

Alain Chablais  
Agent of the Swiss Government

Annexes:

1. Letter from the registrar of 29 April 2020
2. Considerations of the Swiss Government on equity and ambition according to the Communication on Switzerland's NDC of December 2020