

Verein KlimaSeniorinnen and others v Switzerland (Application no. 53600/20)

Request for Just Satisfaction (Article 41 of the Convention)

Request for General Measures (Article 46 of the Convention)

- 1 Due to the Respondent's violation of the Convention, the Applicants respectfully submit that in terms of Art. 41 ECHR, the Court should award just satisfaction in the form of non-pecuniary damages (paras. 2 ff. below) and legal costs and expenses (paras. 6 ff. below). The Applicants also respectfully request the Court to order general measures under Art. 46 ECHR (paras. 15 ff.).

1. **Non-pecuniary Damage**

- 2 The Applicants 2 (respectively, due to her death, her son [REDACTED] in her stead, see Observations on the Facts, hereinafter "OF", para. 39), 3, 4 and 5 *each* claim non-pecuniary damage of CHF 10,000 for the following reasons.
- 3 Regarding the violations of Arts. 2 and/or 8 ECHR, Applicants 2-5, as shown in detail in the application (Additional Submission, hereinafter "AS", section 1.2) as well as in the Observations on the Facts (OF section 2.6), have indeed been suffering for years and continue to suffer from health problems, distress and anxiety during hot periods, which have been increasing in number and intensity due to global warming (OF section 2.4). To minimise physical impairment, they regularly have to severely restrict themselves during heatwaves, which in turn affects their private and family life. Furthermore, they had to make adjustments to their living situations that they would not otherwise have had to make. It is probable that further such adjustments will be necessary in future. Finally, the increased mortality and morbidity risk causes the Applicants to live in a constant state of concern and fear that an upcoming heatwave could severely affect their health and, in the worst case, have fatal consequences.
- 4 Regarding the violations of Arts. 2 and 8 ECHR, the Applicants were left in the dark and with no adequate protection for a long time due to DETEC's and domestic courts' failure to act. Their claims were not examined on the merits for several years, which also caused negative consequences to their well-being. This inaction resulted in a violation of their right to access to court

under Art. 6 ECHR and their right to an effective remedy under Art. 13 ECHR.

- 5 In view of the physical and mental sufferings described, taking into consideration the violations of their procedural rights, and in the light of the Court's practice in comparable cases,¹ the Applicants request the Court to award *each* of the Applicants 2-5 compensation for non-pecuniary damages in the amount of CHF 10'000.

2. Costs and Expenses

- 6 Under the title of costs and expenses, the Applicants claim a total amount of CHF 324'249.25 (including VAT²). The sum comprises, on the one hand, lawyers' fees totalling CHF 315'249.25 (including VAT) and, on the other, costs imposed by the Swiss courts totalling CHF 9'000.00³.
- 7 The Applicants substantiate this amount with the enclosed fee note (doc. 1), which entails a detailed list of legal activities. The total sum of lawyers' fees may seem high; however, it is justified by the complexity and novelty of the proceedings that had to be conducted before the national instances as well as before the European Court of Human Rights, and the importance of the case. Additional complexity arose from the ongoing changes in the relevant fundamentals over the last five years, not only in factual, but also in political and legal terms. Before each instance, it was necessary to address the new circumstances that had arisen in the meantime.
- 8 The great effort required for the procedure is evident from the legal documents submitted in each instance: See Application docs. 14, 16 and 18, the Application to the Court as well as the Observations on the Law/Reply to the Respondent's observations on the law and Observations on the

¹ Regarding non-pecuniary damages for violations of Art. 6 ECHR: *Sabeh El Leil v. France* [GC], no. 34869/05, § 75; *Chatellier v. France*, no. 34658/07, § 49; *Lawyer Partners A.S. v. Slovakia*, no. 54252/07, § 60. Regarding non-pecuniary damages for violations of Art. 8 ECHR: *Deés v. Hungary*, no. 2345/06, § 29; *Mileva v. Bulgaria*, no. 43449/02, § 118 f.; *Brândușe v. Romania*, no. 6586/03, § 83.

² The applicable rate of VAT (Mehrwertsteuer, MWST) changed in the course of the proceedings. From the beginning of the case until 31 December 2017, the rate was 8%. Since then, the rate has been 7.7% until today. The corresponding VAT surcharges are detailed in the enclosed fee note (Annex).

³ See judgement of the Federal Administrative Court of 27 November 2018 (Application doc. 16), p. 24, imposing CHF 5'000, and judgement of the Federal Supreme Court of 5 May 2020 (Application doc. 18), p. 16, imposing CHF 4'000.00. In accordance with practice, DETEC did not charge any costs for the first-instance proceedings (Application doc. 15).

Facts/Reply to the Respondent's observations on the facts submitted together with this request.

- 9 The effort is documented by the enclosed detailed fee note (Annex). The legal fees are composed of the following partial amounts:
- Proceedings before the federal administrative authorities:
CHF 84'218.40 (including VAT of 8%)
 - Proceedings before the Federal Administrative Court:
CHF 31'503.70 (including VAT of 8% or 7.7% respectively)⁴
 - Proceedings before the Federal Supreme Court:
CHF 38'267.95 (including VAT of 7.7%)
 - Proceedings before the European Court of Human Rights⁵:
CHF 161'259.20 (including VAT of 7.7%).
- 10 As mentioned above, the present case raises numerous new and complex questions of law and fact⁶, some of which have changed and continue to change throughout the procedure. For these reasons, it was necessary to work on the matter in a team of lawyers to safeguard the interests of the applicants at all times, both before national instances and before the European Court of Human Rights.
- 11 Until the end of March 2019, the legal representation of the Applicants was carried out jointly by Ursula Brunner and Martin Looser, both partners at *ettlersuter Rechtsanwälte*, and Cordelia Bähr, partner at *bähr ettwein rechtsanwälte*. All of them have in-depth expertise in environmental law, with each of them having a different focus. Due to the serious illness of Ursula Brunner in spring 2019 and her passing on 17 July 2019, the representation was since then carried out by Cordelia Bähr together with Martin Looser. In so far as it was necessary for the diligent legal representation of the Applicants, the lawyers mentioned were assisted by associates of *ettlersuter Rechtsanwälte*. For full transparency, the fee note

⁴ See footnote 2.

⁵ Services rendered until and including Friday, 8 October 2021.

⁶ For an overview, please refer to the tables of contents in the original request to several bodies of the Federal Administration of 25 November 2016 (Application doc. 14 p. 152 ff. */german: p. 209 ff./english: p. 358 ff./*) as well as to the appeals to the Federal Administrative Court (Application doc. 16, p. 50 f. */p. 430 f./*) and the Federal Supreme Court (Application doc. 18 p. 74 f. */german: p. 576 f./english: 648 f./*) of 26 May 2018 and of 21 January 2019.

submitted to the court (Annex) contains a detailed list of the services rendered.

- 12 In addition, it should be noted that, since the inception of the case, the Applicants have been charged a uniform - and by Swiss standards low - hourly rate of CHF 280 (excluding VAT) for all legal services rendered by all lawyers involved.
- 13 Finally, all costs and expenses detailed in the fee note (Annex) were or will be invoiced, pursuant to the contractual obligations between the Applicants and the assigned attorneys. The Applicants did not apply for legal aid before the national authorities and - under Swiss law - would not have been entitled to do so. Therefore, no deductions can be made in that regard.
- 14 For the reasons set out above, the Applicants request the Court to award full compensation for all costs and expenses incurred.

3. General Measures

- 15 The case of the Applicants shows a systematic failure of the Respondent to take all necessary and appropriate measures to ensure that the Applicant's rights under Arts. 2 and 8 ECHR are not violated by the detrimental effects of heat waves. To prevent such effects - and thereby to protect the Applicants' rights -, the Respondent is required to take all necessary measures to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels (see AS para. 57 and Observations on the Law, hereinafter "OL", section 2.3.4.1).
- 16 In fact, as shown in detail, the Respondent has not set itself sufficiently ambitious targets in this regard. Firstly, the Respondent's climate strategy for 2030 and 2050 is far from being sufficient to make a fair share contribution to limiting global warming to 1.5°C above pre-industrial levels (OF section 2.10). Secondly, the Respondent has not taken the necessary measures to meet its insufficient climate targets for 2020 (AS para. 17 and 19 ff.; OF section 2.11).
- 17 These breaches of rights of the Convention are affecting the Applicants directly and seriously (OF section 2.5 and 2.6; OL section 2.2). Further, any potential future individual Applicant in the same situation would see their rights violated in the same way. There is, therefore, a systemic issue at the root of the case. At the same time, the insufficiency of the measures taken

and planned by Respondent has far-reaching consequences, as global warming will have devastating effects in and beyond Switzerland, *inter alia* more intense and frequent heatwaves with the associated consequences (AS section 1.1, OF section 2.3-2.5). Notably, Switzerland as an economically highly developed country is setting a dismal example for other countries among the member states of the European Council and beyond, by not pursuing its highest possible ambition and doing its fair share to limit global warming, and is herewith furthering global inaction.

- 18 Furthermore, it is clear today that to limit global warming to 1.5°C above pre-industrial levels, urgent, meaningful, and ambitious action is imperative. If inaction continues and only insufficient measures are taken, global warming will - with a high degree of certainty - exceed the 1.5°C threshold in the next few years. Such a scenario will further intensify the breach of the Applicants' rights (OF section 2.4 and 2.5).
- 19 The urgency of effectively limiting global warming and the fact that the Applicants as well as any persons in a similar situation are and will continue to be affected by the Respondent's failures calls for the Court to order general measures in this case, and the Applicants request the Court to do so. In accordance with the Applicant's second request to the Court (OL, section 4), the Applicants respectfully request the Court to order the Respondent to adopt the necessary legislative and administrative framework to protect their rights, which is to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels.⁷ This includes:
 - a. ensuring a greenhouse gas emission level in 2030 that is net-negative as compared to the emissions in 1990;
 - b. reducing domestic emissions by 61% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of a.;
 - c. preventing and reducing any emissions occurring abroad that are directly or indirectly attributable to the Respondent, in line with the 1.5°C above pre-industrial levels limit;
 - d. permanently removing greenhouse gas emissions from the atmosphere and storing them in safe, ecologically and socially sound

⁷ Drawing here on the examples of general measures ordered in cases such as *Greens and M.T. v. The United Kingdom*, no. 60041/08 and 60054/08, § 110 ff., and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 202.

greenhouse gas sinks, if, despite *a.*, *b.*, *c.*, any greenhouse gas emissions continue to occur within the control of the Respondent, or the concentration of greenhouse gases in the atmosphere is exceeding the level corresponding to the 1.5°C above pre-industrial levels limit.

- 20 Moreover, given the Respondent's continued failure to adopt the legislative and administrative framework necessary to effectively protect the Applicant's rights, the Court should set a time-limit which is adequate in view of the Applicant's requests to the Court (OL section 4) for the Respondent to implement such a framework.⁸
- 21 Such general measures are necessary to enable the Committee of Ministers to verify the *timely* and, regarding the necessary measures to protect the Applicant's rights, *sufficient* implementation of the Court's judgment in the present case.
- 22 Failing to order these measures would, considering the violation of the Applicant's rights, their elderly age, the urgency of the situation and the Respondent's history of inaction, likely result in a continued breach of the Applicant's rights.

4. Summary of claims regarding remedies

To summarise, the Applicant respectfully requests the Court to award them just satisfaction and order general measures, as follows:

- (1) to award each individual Applicant CHF 10'000 for non-pecuniary damage;
- (2) to award CHF 324'249.25 for cost and expenses;
- (3) to order the Respondent to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels, which includes:
 - a. ensuring a greenhouse gas emission level in 2030 that is net-negative as compared to the emissions in 1990;
 - b. reducing domestic emissions by 61% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of *a.*;

⁸ *Greens And M.T. v. The United Kingdom*, no. 60041/08 and 60054/08, § 115.

- c. preventing and reducing any emissions occurring abroad that are directly or indirectly attributable to the Respondent, in line with the 1.5°C above pre-industrial levels limit;
 - d. permanently removing greenhouse gas emissions from the atmosphere and storing them in safe, ecologically and socially sound greenhouse gas sinks, if, despite *a.*, *b.*, *c.*, any greenhouse gas emissions continue to occur within the control of the Respondent, or the concentration of greenhouse gases in the atmosphere is exceeding the level corresponding to the 1.5°C above pre-industrial levels limit;
- (4) to set a binding time-limit for the Respondent to implement such a framework which is adequate in view of (3) above.

Zurich, 13 October 2021

Yours faithfully,



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Annex: Fee note