Verein KlimaSeniorinnen Schweiz e altri c. Svizzera

Riassunto della sentenza della Grande Camera della Corte europea dei diritti dell'uomo del 9 aprile 2024

redatto su incarico dell'Associazione Anziane per il clima Svizzera

da

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Indice

I. Riassunto della sentenza della Grande Camera della Corte europea dei diritti dell'uomo del 9 aprile 2024

A. Introduzione

1 La Corte europea dei diritti dell'uomo (Corte EDU) ha basato la propria sentenza del 9 aprile 2024 nella causa Verein KlimaSeniorinnen Schweiz e altri c. Svizzera[1] su una situazione di fatto e di diritto, illustrata in oltre 100 pagine, riconosciuta dalla Svizzera e dagli Stati membri del Consiglio d'Europa. Nell'ottica della valutazione degli obiettivi climatici, la Corte non disponeva dunque soltanto delle prese di posizione della Svizzera ma, sulla base del caso analogo sotto questo aspetto *Duarte Agostinho and Others c. Portugal and 32 Others*[2], giudicato parallelamente, anche di quelle di altri 31 Stati del Consiglio d'Europa.

2 La data di riferimento per i fatti posti alla base della sentenza, il quadro giuridico pertinente e la relativa prassi in materia era quella della decisione del 14 febbraio 2024. La Corte EDU ha incluso nel proprio processo decisionale tutti gli sviluppi nazionali e internazionali intervenuti sino a quel momento. Ciò vale in particolare anche per la votazione del 18 giugno 2023 concernente la legge federale sugli obiettivi in materia di protezione del clima, l'innovazione e il rafforzamento della sicurezza energetica (LoCli)[3].

3 L'esposizione che segue si limita a una riproduzione riassuntiva dei considerandi della Grande Camera della Corte EDU. Eccezion fatta per una ponderazione tematica propria di una sintesi, essa si astiene da qualsiasi valutazione o da analisi proprie e mira a consentire a un'ampia cerchia di destinatari di confrontarsi con una sentenza di circa 260 pagine, sia approfonditamente, sia con un dispendio di tempo ragionevole. La base del riassunto è costituita dagli estratti delle sentenze acclusi in allegato.

B. Situazione iniziale

4 I rapporti del Gruppo intergovernativo sul cambiamento climatico («IPCC») costituiscono la base scientifica principale. L'IPCC ha constatato che:

- Il mondo non è sulla giusta via; gli impegni assunti nell'ambito dell'Accordo di Parigi sul clima4 non vengono adempiuti (divario tra le misure attuate e le promesse degli Stati).
- Il mancato raggiungimento degli obiettivi dell'Accordo di Parigi sul clima ha notevoli effetti negativi sulla vita e sul benessere delle persone.
- La finestra temporale per impedire un aumento della temperatura globale superiore a 1,5°C rispetto ai livelli preindustriali si sta rapidamente esaurendo. Le

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1 *Verein KlimaSeniorinnen Schweiz e altri c. Svizzera* (Grande Camera), n. procedura 53600/20.

2 *Duarte Agostinho and Others v. Portugal and 32 Others* (Grande Camera), n. procedura 39371/20.

3 Legge federale sugli obiettivi in materia di protezione del clima, l'innovazione e il rafforzamento della sicurezza energetica, RS 814.310.

4 Accordo di Parigi (Accordo sul clima), RS 0.814.012.

decisioni adottate in questo decennio sono della massima importanza e avranno ripercussioni per migliaia di anni.

– Per raggiungere gli obiettivi sono importanti il rispetto di un bilancio di CO_2 e una politica con un saldo netto pari a zero emissioni. L'IPCC ha calcolato a tal fine dei percorsi di riduzione globale delle emissioni e un bilancio globale di CO_2.

5 Nel primo punto globale della situazione della COP28[5] del 13 dicembre 2023, le parti (anche del Consiglio d'Europa)

– hanno sottolineato la necessità di misure urgenti e di sostegno per raggiungere l'obiettivo di 1,5°C e far fronte alla crisi climatica in questo decennio critico;

– si sono impegnate ad agire più rapidamente in questo decennio critico, sulla base delle migliori conoscenze scientifiche disponibili e tenendo conto dell'equità e del principio delle responsabilità comuni ma differenziate e delle rispettive capacità, alla luce delle diverse situazioni nazionali e nel contesto dello sviluppo sostenibile e degli sforzi per eliminare la povertà;

– hanno rilevato con preoccupazione che le parti, che sono Paesi industrializzati, nel periodo anteriore al 2020, presentavano lacune sia in termini di obiettivi, sia nell'attuazione della riduzione delle emissioni e che l'IPCC aveva già precedentemente sottolineato che i Paesi industrializzati, entro il 2020, dovevano ridurre le loro emissioni del 25-40% rispetto ai livelli del 1990, obiettivo che non è stato raggiunto;

– hanno espresso la loro preoccupazione per il fatto che il bilancio di CO_2, in linea con il raggiungimento dell'obiettivo di temperatura fissato dall'Accordo di Parigi, è nel frattempo divenuto esiguo e si sta rapidamente esaurendo, e hanno riconosciuto che le emissioni nette di CO_2 storicamente cumulate rappresentano già circa i quattro quinti del bilancio globale di CO_2, con una probabilità del 50% di limitare il riscaldamento globale a 1,5°C.

6 La consapevolezza che le conseguenze del riscaldamento climatico si ripercuotono sui diritti umani non è una novità. Dalla Risoluzione n. 43/53 del 6 dicembre 1988 sulla protezione del clima globale per le generazioni presenti e future dell'umanità, l'Assemblea generale delle Nazioni Unite ha iscritto all'ordine del giorno pressoché ogni anno il tema della protezione globale del clima per le generazioni presentì e future e ha adottato numerose risoluzioni. Anche svariati tribunali nazionali negli Stati membri del Consiglio d'Europa lo hanno già riconosciuto (ad es. in Germania, nei Paesi Bassi e in Belgio).

C. Il ruolo della Corte europea dei diritti dell'uomo nel contesto del cambiamento climatico

7 Le misure per combattere il cambiamento climatico e i suoi effetti negativi richiedono in larga misura misure legislative. In una democrazia, tali misure dipendono necessariamente da un processo decisionale democratico. Un intervento giudiziario,

5 FCCC/PA/CMA/2023/L.17, 13 dicembre 2023.

anche da parte della Corte EDU, non può sostituire le misure che devono essere adottate dal legislativo e dall'esecutivo.

8 Tuttavia, una democrazia non può essere ridotta alla volontà della maggioranza delle elettrici e degli elettori e delle/dei rappresentanti eletti senza adempiere ai requisiti dello Stato di diritto. Le competenze dei tribunali nazionali e della Corte EDU sono pertanto complementari ai processi democratici.

9 Il compito della giustizia consiste nel garantire il necessario controllo giudiziario sul rispetto delle disposizioni di legge – nel presente caso: della Convenzione europea dei diritti dell'uomo (CEDU[6]). Quando i ricorsi presentati alla Corte vertono su questioni connesse alla politica di uno Stato che toccano i diritti della Convenzione, l'oggetto in esame non è più solo una questione politica, ma anche una questione giuridica. In tali casi la Corte EDU mantiene la propria competenza, seppur esercitandola con grande prudenza nei confronti dell'organo decisionale politico nazionale. Il potere discrezionale delle autorità nazionali non è illimitato e va di pari passo con un controllo da parte della Corte EDU, che deve accertarsi che gli effetti delle misure nazionali contestate siano compatibili con la CEDU.

10 La competenza della Corte EDU per le controversie giuridiche connesse al cambiamento climatico non può pertanto essere esclusa in linea di principio. La Corte EDU, nel suo ruolo di organo giuridico incaricato dell'attuazione dei diritti umani, non può ignorare che l'insufficienza ampiamente riconosciuta delle misure statali finora adottate per combattere il cambiamento climatico comporta un inasprimento delle conseguenze negative e delle conseguenti minacce ai diritti umani.

11 Nel contesto del cambiamento climatico, anche la ripartizione degli oneri tra le generazioni assume un'importanza particolare, in relazione sia alle diverse generazioni di persone attualmente viventi, sia a quelle future. Le generazioni future dovranno probabilmente sopportare il peso vieppiù maggiore delle conseguenze delle attuali lacune e omissioni nella lotta al cambiamento climatico. Parimenti, esse non hanno la possibilità di prendere parte ai processi decisionali odierni. Con l'impegno assunto nell'ambito della Convenzione quadro delle Nazioni Unite sui cambiamenti climatici (UNFCCC)[7], gli Stati del Consiglio d'Europa si sono prefissi di proteggere il sistema climatico a beneficio della presente e delle future generazioni del genere umano (art. 3 UNFCCC). La prospettiva intergenerazionale sottolinea il rischio, intrinseco ai processi decisionali politici, che gli interessi a breve termine possano prevalere sulle necessità urgenti di definire una politica sostenibile, ciò che rende tale rischio particolarmente grave e giustifica ulteriormente la possibilità di un controllo giurisdizionale.

12 Ritenuta la necessità di affrontare la minaccia acuta rappresentata dal cambiamento climatico e in considerazione del consenso generale sul fatto che il cambiamento climatico costituisce motivo di preoccupazione comune per l'umanità, la questione non

6 Convenzione per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, RS 0.101.

7 Convenzione quadro delle Nazioni Unite sui cambiamenti climatici, RS 0.814.01.

è più se, ma come i tribunali per i diritti umani debbano affrontare l'impatto delle conseguenze del cambiamento climatico sull'esercizio dei diritti dell'uomo.

13 A questo proposito, l'attuale, costante giurisprudenza della Corte EDU relativa ad altri problemi ambientali[8] che toccano i diritti dell'uomo (segnatamente: la salute e la vita delle persone) non può essere direttamente trasferita al contesto del cambiamento climatico a causa di differenze fondamentali[9]. Occorre piuttosto adottare un approccio che riconosca e tenga conto delle peculiarità del cambiamento climatico e che sia concepito per le sue caratteristiche specifiche.

D. Causalità nel contesto del cambiamento climatico

14 La causalità risp. le questioni inerenti la causa influiscono sulla valutazione dello statuto di vittima come pure sugli aspetti materiali degli impegni e della responsabilità di uno Stato. Si devono distinguere e valutare quattro dimensioni della causalità:

– *Nesso tra le emissioni di gas serra e il conseguente accumulo di gas serra nell'atmosfera globale e i diversi fenomeni del cambiamento climatico:* si tratta di una questione di conoscenza scientifica e di valutazione; in questo contesto rivestono particolare importanza i rapporti elaborati dall'IPCC.

– *Nesso tra gli effetti negativi del cambiamento climatico e il loro impatto sui diritti umani:* la Corte EDU deve tenere conto del riconoscimento scientifico, politico e giudiziario del nesso esistente tra gli effetti negativi del cambiamento climatico e l'esercizio (di diversi aspetti) dei diritti dell'uomo. La CEDU è infatti uno strumento vivente che deve essere interpretato alla luce della situazione attuale e in linea con gli sviluppi del diritto internazionale. Per la Corte EDU, quanto segue funge pertanto da punto di partenza per l'ulteriore valutazione: il cambiamento climatico di origine antropica esiste, rappresenta una grave minaccia, presente e futura, per l'esercizio dei diritti umani garantiti dalla Convenzione, gli Stati ne sono consapevoli e sono in grado di adottare misure, i relativi rischi saranno presumibilmente minori se l'aumento della temperatura sarà limitato a 1,5°C e gli attuali sforzi globali per arginare il cambiamento climatico non sono sufficienti per raggiungere quest'ultimo obiettivo.

– *Nesso tra un danno o il rischio di un danno per determinate persone o gruppi di persone e gli atti o le omissioni degli enti statali:* nel contesto del cambiamento climatico, le questioni relative allo statuto di vittima individuale o al contenuto specifico degli obblighi statali non possono essere definite sulla base di una

8 Tra l'altro, frane, terremoti, inquinamento atmosferico tossico, rumore.

9 Nel contesto del cambiamento climatico non esiste una sola fonte di danno. Il CO_2 di *per* sé non è dannoso. Le emissioni di gas serra non conoscono confini. Gli effetti del riscaldamento globale sono molteplici e il rischio immediato per l'uomo deriva dalle conseguenze del cambiamento climatico. Interi gruppi di popolazioni sono o saranno colpiti, in modi e intensità diversi. Le fonti di emissioni di gas serra sono legate alle attività fondamentali della società umana e le misure di riduzione sono necessariamente oggetto di una regolamentazione globale. La decarbonizzazione delle economie nazionali e degli stili di vita può essere raggiunta solo con un cambiamento globale e radicale.

rigorosa *conditio sine qua non*[10]. Occorre piuttosto tener conto delle peculiarità del cambiamento climatico e delle sue caratteristiche specifiche. Gli obblighi di protezione di uno Stato scattano in funzione di un determinato grado di gravità del rischio di conseguenze negative per la vita, la salute e il benessere delle persone.

– *Imputabilità della responsabilità degli effetti negativi del cambiamento climatico in un contesto in cui più attori contribuiscono alle quantità e alle ricadute complessive delle emissioni di gas serra:* ogni Stato ha la propria parte di responsabilità nell'adozione di misure volte a combattere il cambiamento climatico. Uno Stato non può sottrarsi alla propria responsabilità appellandosi alle responsabilità degli altri Stati. Per quanto riguarda l'argomento della «goccia nel mare», secondo la costante giurisprudenza della Corte EDU non è necessario provare che il danno non si sarebbe verificato «in assenza» dell'omissione delle autorità. Ai fini della responsabilità dello Stato è sufficiente che i provvedimenti ragionevolmente esigibili che non sono stati adottati dalle autorità nazionali avrebbero avuto la reale possibilità di modificare l'esito o di ridurre il danno. In questa valutazione deve inoltre essere tenuto conto del principio di precauzione (art. 3 UNFCCC).

E. Principi per l'interpretazione della CEDU nel contesto del cambiamento climatico

15 La Corte EDU ha il compito di garantire il rispetto della CEDU. Secondo la sua costante giurisprudenza, la CEDU deve essere interpretata, per quanto possibile, in conformità alle altre norme del diritto internazionale, in particolare all'Accordo di Parigi sul clima. Occorre inoltre prendere in considerazione anche le questioni di fatto e gli sviluppi che hanno un impatto sui diritti dell'uomo. L'interpretazione e l'applicazione della CEDU devono pertanto tenere conto anche delle univoche evidenze scientifiche e del crescente consenso internazionale riguardo agli effetti negativi del cambiamento climatico sull'esercizio dei diritti dell'uomo. La mancata applicazione da parte della Corte EDU di un approccio dinamico ed evolutivo rischierebbe di ostare a riforme o a miglioramenti nelle società.

F. Legittimazione a ricorrere delle singole persone nel contesto del cambiamento climatico

16 Esistono valide prove scientifiche del fatto che il cambiamento climatico ha già contribuito all'aumento dei tassi di malattia e di mortalità, in particolare tra determinati gruppi di persone maggiormente bisognose di protezione, e che il cambiamento climatico rischia di diventare irreversibile e catastrofico in assenza di un intervento deciso da parte degli Stati.

17 Tuttavia, nel contesto del cambiamento climatico, chiunque può essere direttamente colpito, in un modo o nell'altro e in misura diversa, dai suoi effetti negativi o essere esposto al rischio reale di esserne direttamente interessato. Potenzialmente, un numero enorme di persone potrebbe così rivendicare lo statuto di vittima. Anche gli

10 Condizione senza la quale non si può …

esiti dei ricorsi non sono circoscritti a determinate singole persone o a gruppi specifici identificabili, ma riguardano inevitabilmente la popolazione in generale. L'esito dei procedimenti giudiziari sarà necessariamente lungimirante per quanto riguarda ciò che è necessario per garantire un'efficace mitigazione degli effetti negativi del cambiamento climatico o per adattarvisi.

18 In considerazione di questo contesto, la Corte EDU si è posta la questione volta a sapere come poter garantire la necessaria ed efficace protezione dei diritti sanciti dalla CEDU senza compromettere l'esclusione dell'*actio popularis*[11] dal sistema della Convenzione.

19 Alla luce di queste caratteristiche specifiche del cambiamento climatico, la Corte EDU stabilisce i seguenti criteri per lo statuto di vittima delle singole persone:

– una singola persona ricorrente deve essere fortemente esposta agli effetti negativi del cambiamento climatico, ossia la portata e la gravità (del rischio) di conseguenze pregiudizievoli di un'azione o di un'omissione dello Stato che la concernono devono essere considerevoli; e

– deve sussistere l'urgente necessità di assicurare la protezione individuale della singola persona ricorrente poiché le misure adeguate per ridurre il danno non sono disponibili o sono insufficienti.

Tali criteri specifici per determinare la qualità di vittima delle singole persone non si applicano nei casi in cui si tratta di una perdita o di un danno individuale specifico già verificatosi.

20 La soglia per soddisfare questi criteri è particolarmente elevata. Tenuto conto dell'esclusione dell'*actio popularis*, la questione del raggiungimento di tale soglia da parte di una singola persona ricorrente dipende da un'accurata valutazione delle circostanze concrete del caso. In tale contesto, la Corte EDU terrà debitamente conto di circostanze quali le condizioni locali, le peculiarità e le vulnerabilità individuali, nonché dell'attualità / della lontananza e/o della probabilità degli effetti negativi del cambiamento climatico nel corso del tempo, degli effetti specifici sulla vita, la salute o il benessere di una singola persona ricorrente, della misura e della durata degli effetti deleteri, della portata del rischio (locale o generale) e del tipo di vulnerabilità della singola persona ricorrente.

G. Legittimazione a ricorrere delle associazioni nel contesto del cambiamento climatico

21 La Corte EDU ritiene opportuno, anche alla luce della Convenzione di Aarhus[12], riconoscere la possibilità di un'azione collettiva a salvaguardia dei diritti dell'uomo per

11 Azione popolare; azione di interesse pubblico.

12 Convenzione sull'accesso alle informazioni, la partecipazione del pubblico ai processi decisionali e l'accesso alla giustizia in materia ambientale (Convenzione di Aarhus), RS 0.814.07.

coloro che sono o rischiano di essere colpiti dagli effetti negativi del cambiamento climatico, anziché limitarsi a quelle promosse dalle singole persone. In particolare:

– Nelle società moderne, quando le cittadine e i cittadini si trovano di fronte a decisioni amministrative particolarmente complesse, il ricorso a organismi collettivi come le associazioni è uno dei mezzi accessibili, talvolta l'unico, a loro disposizione per difendere efficacemente i loro interessi specifici.

– Ciò è particolarmente vero nel contesto del cambiamento climatico, che è un fenomeno globale e complesso. Le sue cause sono molteplici e i suoi effetti negativi non riguardano solo un individuo determinato o un gruppo di individui, ma sono piuttosto «motivo di preoccupazione comune per il genere umano» (Preambolo dell'UNFCCC).

– Nella società odierna si è assistito a un'evoluzione verso il riconoscimento dell'importanza delle associazioni nella conduzione di procedimenti sul clima per conto delle persone interessate. Le controversie giuridiche connesse al cambiamento climatico spesso implicano questioni giuridiche e fattuali complesse che richiedono notevoli risorse finanziarie, logistiche e di coordinamento e l'esito di una controversia si ripercuote inevitabilmente sulla posizione di una moltitudine di singoli individui.

– Nell'ottica della ripartizione degli oneri tra le generazioni, che riveste particolare importanza (n. marg. 11), l'azione collettiva tramite associazioni o altri gruppi d'interesse può essere uno degli unici mezzi per far sentire la voce delle generazioni future, nettamente svantaggiate in termini di rappresentanza nella società odierna, e attraverso cui poter cercare di influenzare i processi decisionali rilevanti.

– Considerata l'urgenza di contrastare gli effetti negativi del cambiamento climatico, compreso il grave rischio di irreversibilità, gli Stati dovrebbero adottare misure adeguate per salvaguardare non solo i diritti sanciti dalla CEDU delle persone nel loro territorio giurisdizionale attualmente interessate dal cambiamento climatico, ma anche quelli delle persone il cui godimento dei diritti sanciti dalla CEDU potrebbe in futuro essere gravemente e irreversibilmente compromesso in assenza di un intervento tempestivo.

22 Tuttavia, l'esclusione dell'*actio popularis* richiede che la possibilità per le associazioni di presentare ricorso alla Corte sia subordinata a determinate condizioni.

23 Alla luce di quanto precede, la legittimazione a ricorrere delle associazioni dinanzi alla Corte EDU è determinato dai fattori esposti qui di seguito. Per essere riconosciuta come avente diritto, l'associazione in questione deve:

– essere legalmente costituita sul territorio nazionale interessato o essere legittimamente autorizzata a ricorrere nel territorio in questione;

– poter dimostrare che, conformemente ai propri statuti, persegue lo scopo di difendere i diritti umani dei propri membri o di altre persone colpite presenti sul territorio nazionale interessato, indipendentemente dal fatto che l'associazione si

limiti a misure collettive per la protezione di tali diritti dalle minacce derivanti dal cambiamento climatico oppure le includa;

– poter dimostrare di essere considerata seriamente qualificata e rappresentativa per agire a nome dei suoi membri o di altre persone interessate all'interno del territorio nazionale che sono esposte a minacce specifiche o a effetti negativi del cambiamento climatico sulla loro vita, la loro salute o il loro benessere, che sono tutelati dalla CEDU.

24 In tale contesto, la Corte EDU prende in considerazione fattori quali lo scopo per il quale l'associazione è stata costituita, l'assenza di fini di lucro, la natura e l'estensione delle sue attività nel territorio interessato, i suoi membri e la sua rappresentatività, i suoi principi e la trasparenza della sua conduzione, nonché la questione volta a sapere se, nelle circostanze specifiche di un caso, il riconoscimento di una siffatta legittimazione a ricorrere sia complessivamente nell'interesse di una regolare amministrazione della giustizia.

25 Per la legittimazione a ricorrere di un'associazione non è necessario che le persone a nome delle quali è stata promossa l'azione adempiano personalmente ai requisiti posti allo statuto di vittima delle singole persone in relazione al cambiamento climatico (n. marg. 19 seg.).

26 Nell'interesse di una regolare amministrazione della giustizia, se il diritto di ricorrere ai tribunali nazionali delle associazioni che soddisfano le condizioni di cui sopra è limitata, la Corte EDU può anche prendere in considerazione se e in quale misura singoli membri o altre persone interessate abbiano avuto accesso a un tribunale nello stesso procedimento nazionale o in un procedimento nazionale connesso.

H. Quando è toccato il «diritto alla vita» (art. 2 CEDU) nel contesto del cambiamento climatico?

27 Le omissioni di uno Stato nella lotta contro il cambiamento climatico possono, per loro natura, mettere in pericolo la vita di un essere umano. I ricorrenti hanno presentato prove scientifiche convincenti attestanti un nesso tra cambiamento climatico e aumento del rischio di mortalità, in particolare tra i gruppi vulnerabili.

28 L'applicabilità dell'art. 2 CEDU non può tuttavia essere astratta, ma deve sussistere un pericolo «reale e immediato» per la vita. Il criterio di «reale e immediato» può essere inteso nel contesto del cambiamento climatico quale «una minaccia grave, effettiva e sufficientemente identificabile» per la vita, ciò che include un elemento di vicinanza materiale e temporale della minaccia ai danni fatti valere.

29 In determinate circostanze, come nel presente caso, questa minaccia può in linea di massima sussistere poiché l'IPCC ha stabilito con grande certezza che le persone anziane sono esposte a un «rischio più elevato» di morbilità e mortalità connesso alle temperature. È tuttavia dubbio se l'inoperosità dello Stato abbia avuto conseguenze talmente pericolose per la vita da comportare l'applicabilità dell'art. 2 CEDU. Ritenuto che l'obbligo di protezione dello Stato nel contesto ambientale ai sensi dell'8 CEDU si

sovrappone in larga misura a quello dell'art. 2 CEDU, tale questione può tuttavia essere lasciata aperta.

I. Quando è toccato il «diritto al rispetto della vita privata e familiare» (art. 8 CEDU) nel contesto del cambiamento climatico?

30 L'art. 8 CEDU include il diritto del singolo individuo a una protezione efficace da parte delle autorità statali contro i gravi effetti negativi del cambiamento climatico sulla sua vita, la sua salute, il suo benessere e la sua qualità di vita.

31 L'applicabilità dell'art. 8 CEDU dipende dal «pregiudizio effettivo» o dall'esistenza di un «pericolo rilevante e sufficientemente grave di pregiudizio» alla vita, alla salute, al benessere e alla qualità della vita. Nella verifica dell'adempimento di questo requisito, ci si deve basare sui criteri relativi allo statuto di vittima delle singole persone (n. marg. 19 e seg.) o alla legittimazione a ricorrere delle associazioni (n. marg. 23 e segg.).

32 L'Associazione Anziane per il clima Svizzera è legittimata a ricorrere, motivo per cui al ricorso è applicabile l'art. 8 CEDU. Difatti, l'Associazione Anziane per il clima Svizzera

- è costituita legalmente,
- persegue, conformemente ai propri statuti, lo scopo della difesa dei diritti umani dei propri membri e delle altre persone interessate dalle minacce scaturenti dal cambiamento climatico in Svizzera,
- è qualificata e rappresentativa per agire a nome di coloro che asseriscono in modo sostenibile di essere esposti a minacce specifiche o agli effetti negativi del cambiamento climatico sulla loro vita, la loro salute, il loro benessere e la loro qualità di vita, così come tutelati dalla CEDU.
- Inoltre, le singole persone ricorrenti non hanno avuto accesso a un tribunale in Svizzera. La concessione della legittimazione ad agire all'Associazione Anziane per il clima Svizzera è pertanto nell'interesse di una regolare amministrazione della giustizia.

33 Le ricorrenti individualmente, per contro, non hanno lo statuto di vittima, motivo per cui neppure l'art. 8 CEDU è loro applicabile. Le ricorrenti individualmente non hanno soddisfatto i criteri relativi allo statuto di vittima delle persone singole nel contesto del cambiamento climatico.

- Le ricorrenti individualmente hanno di fatto presentato informazioni e prove che dimostrano come il cambiamento climatico si ripercuote sulle donne più anziane in Svizzera, in particolare per quanto riguarda l'aumento della frequenza e dell'intensità delle ondate di caldo. I dati esibiti dalle ricorrenti individualmente, provenienti da gruppi di esperti nazionali e internazionali la cui rilevanza e forza probatoria non sono messe in discussione, mostrano che negli ultimi anni diverse estati sono state tra le più calde mai registrate in Svizzera e che le ondate di caldo sono associate a un aumento della mortalità e della morbilità, in particolare tra le donne più anziane. Anche se tali constatazioni indicano senza alcun dubbio che le ricorrenti individualmente appartengono a un gruppo particolarmente vulnerabile

agli effetti del cambiamento climatico, ciò non è sufficiente alla luce dell'elevata soglia che si applica allo statuto di vittima delle singole persone nel contesto del cambiamento climatico.

– E anche se è possibile che le singole ricorrenti 2, 3 e 4 siano di fatto individualmente pregiudicate nella loro qualità di vita dalle ondate di calore, dagli atti non emerge che esse siano state esposte o corrano il rischio di essere esposte agli effetti negativi del cambiamento climatico in misura tale da giustificare un urgente bisogno di protezione individuale. Le ricorrenti individualmente non hanno sofferto di uno stato di salute critico, il cui possibile peggioramento a causa delle ondate di caldo non avrebbe potuto essere mitigato mediante le misure di adattamento disponibili in Svizzera o mediante misure di adattamento personali ragionevolmente esigibili. Questa valutazione avviene anche in considerazione dell'entità delle ondate di caldo che colpiscono la Svizzera.

J. Cosa devono fare gli Stati membri del Consiglio d'Europa nel contesto del cambiamento climatico per adempiere al loro obbligo di protezione in materia di diritti umani?

1. L'obbligo di protezione degli Stati in materia ambientale (giurisprudenza costante)

34 Secondo la costante giurisprudenza della Corte EDU sull'adempimento degli obblighi di protezione nel contesto delle questioni ambientali,

– gli Stati hanno l'obbligo di creare un quadro giuridico e amministrativo che garantisca un'effettiva protezione della salute e della vita umana e

– gli Stati sono tenuti ad applicare tempestivamente ed efficacemente tale quadro giuridico e amministrativo.

35 Nel valutare se uno Stato ha rispettato i propri obblighi di protezione, il Tribunale deve verificare se lo Stato ha agito nell'ambito del suo potere discrezionale. In questo contesto non è compito della Corte EDU stabilire ciò che avrebbe dovuto esattamente essere fatto; tuttavia essa può valutare se le autorità hanno affrontato la questione con la dovuta diligenza e hanno tenuto conto di tutti gli interessi in gioco.

36 Rilevante è anche il processo decisionale nazionale. Per quanto concerne le questioni complesse, come la politica ambientale ed economica, lo stesso deve necessariamente includere indagini e studi adeguati, in modo che le autorità possano trovare un giusto equilibrio tra i diversi interessi in gioco. Il pubblico deve inoltre avere accesso alle conclusioni tratte dagli studi pertinenti per poter valutare il rischio a cui è esposto. Le persone interessate devono avere la possibilità di partecipare efficacemente ai procedimenti rilevanti e di far esaminare le loro argomentazioni pertinenti, anche se l'organizzazione concreta del procedimento rientra nel potere discrezionale dello Stato.

37 Nella determinazione del contenuto dell'obbligo di protezione di uno Stato ai sensi degli artt. 2 e 8 CEDU in relazione al cambiamento climatico, la Corte EDU tiene conto di tali principi. Tuttavia, data la natura particolare del fenomeno del cambiamento climatico rispetto alle fonti isolate di danno ambientale precedentemente trattate nella giurisprudenza della Corte, i parametri generali dell'obbligo di protezione devono essere adattati al contesto specifico del cambiamento climatico.

2. Il potere discrezionale degli Stati nel contesto del cambiamento climatico

38 In base al principio di sussidiarietà, incombe in primo luogo alle autorità nazionali di garantire il rispetto dei diritti e delle libertà sanciti dalla Convenzione; essi dispongono al riguardo di un certo potere discrezionale, fatta salvo la competenza di controllo della Corte EDU.

39 Tenuto conto delle conoscenze scientifiche sul modo in cui il cambiamento climatico incide sui diritti sanciti dalla CEDU e in considerazione delle conoscenze scientifiche sull'urgenza di affrontare gli effetti negativi del cambiamento climatico, sulla gravità delle sue conseguenze, compreso il serio rischio che raggiungano il punto di irreversibilità, nonché del riconoscimento scientifico, politico e giudiziario di un nesso tra gli effetti negativi del cambiamento climatico e l'esercizio (di diversi aspetti) dei diritti umani, la Corte EDU ritiene giustificato che alla protezione del clima sia attribuito un peso considerevole nell'ambito della ponderazione di tutte le considerazioni, tra loro contrastanti, relative al cambiamento climatico. Altri fattori che vanno nella stessa direzione sono il carattere globale dell'impatto delle emissioni di gas serra, a differenza dei danni ambientali che si verificano solo all'interno dei confini nazionali di uno Stato, la generale insufficienza dei risultati ottenuti dagli Stati nell'adozione di misure per fronteggiare i rischi del cambiamento climatico e la constatazione dell'IPCC secondo cui «la finestra temporale per garantire a tutti un futuro dignitoso e sostenibile si sta rapidamente esaurendo». Tali circostanze sottolineano la gravità dei rischi derivanti dal mancato rispetto dell'obiettivo globale.

40 Partendo dal principio secondo cui agli Stati deve essere riconosciuto un certo potere discrezionale, le considerazioni che precedono portano a operare una distinzione relativa alla portata dell'apprezzamento:

- un potere discrezionale ridotto nella definizione degli obiettivi necessari per combattere il cambiamento climatico (in considerazione della natura e della gravità della minaccia e del consenso generale sull'importanza di un'efficace mitigazione dei cambiamenti climatici mediante obiettivi di riduzione dei gas serra, in linea con l'impegno assunto dalle parti di conseguire la neutralità in termini di emissioni di CO_2);
- un potere discrezionale più ampio nella scelta dei mezzi per raggiungere tali obiettivi.

3. Obbligo di protezione di uno Stato nel contesto del cambiamento climatico

41 L'art. 8 CEDU include il diritto del singolo individuo a una protezione efficace da parte dello Stato contro i gravi effetti negativi sulla sua vita, la sua salute, il suo benessere e la sua qualità di vita derivanti dagli effetti deleteri e dai rischi del cambiamento climatico.

42 L'obbligo di uno Stato derivante da tale diritto consiste nel contribuire a garantire tale protezione efficace. Una protezione efficace include, in linea con gli impegni internazionali assunti dagli Stati membri (in particolare l'UNFCCC e l'Accordo di Parigi sul clima) e con i dati scientifici pertinenti (in particolare l'IPCC), la prevenzione di un aumento della temperatura media globale al di sopra di un livello tale da provocare gravi e irreversibili impatti negativi sui diritti umani.

43 In questo contesto, è dovere principale degli Stati di

- adottare norme e misure vincolanti in grado di mitigare gli effetti attuali e quelli potenzialmente irreversibili del futuro cambiamento climatico;
- applicarle e attuarle efficacemente nella pratica.

44 Queste norme e misure devono

- essere orientate alle peculiarità della fattispecie in questione (§§ 107–120 della sentenza, supra n. marg. 4) e dei rischi a esse connessi;
- essere determinate dagli obiettivi globali formulati nell'Accordo di Parigi sul clima per limitare l'aumento della temperatura globale. Tuttavia, questi obiettivi da soli non sono palesemente sufficienti per valutare il rispetto della CEDU. Ogni singolo Stato è invitato a definire il proprio percorso nazionale per raggiungere la neutralità in termini di emissioni di CO_2.

45 Nel valutare se uno Stato si è conformato ai propri obblighi tenendo conto del proprio potere discrezionale (supra n. marg. 38 segg.), la Corte EDU esamina se le autorità nazionali competenti, a livello legislativo, esecutivo o giudiziario, hanno adeguatamente tenuto conto della necessità di:

a. definire misure generali che specifichino una tempistica per il raggiungimento della neutralità in termini di emissioni di CO_2 e il bilancio globale di CO_2 residuo per lo stesso periodo, in linea con l'obiettivo sovraordinato degli impegni nazionali e/o globali volti ad arginare il cambiamento climatico;

b. definire obiettivi intermedi e vie di riduzione delle emissioni di gas serra (settoriali o altri metodi pertinenti) che siano in linea di massima adeguati al conseguimento degli obiettivi nazionali globali di riduzione delle emissioni di gas serra;

c. addure la prova di aver regolarmente conseguito o di essere in procinto di conseguire i pertinenti obiettivi di riduzione delle emissioni di gas serra (cfr. lettere a e b);

d. aggiornare i pertinenti obiettivi di riduzione delle emissioni di gas serra con la dovuta diligenza e sulla base delle migliori conoscenze scientifiche disponibili; e

e. agire tempestivamente, in modo appropriato e coerente nell'elaborazione e nell'attuazione delle norme di legge e delle misure pertinenti.

46 La valutazione da parte della Corte EDU circa l'adempimento di tali requisiti è di natura globale. Una carenza in un determinato settore non implica necessariamente, di per sé, che lo Stato abbia ecceduto il proprio potere discrezionale.

47 Una protezione statale efficace dei singoli individui dai gravi effetti negativi sulla sua vita, la sua salute, il suo benessere e la sua qualità della vita derivanti dagli effetti deleteri e dai rischi del cambiamento climatico richiede inoltre che le summenzionate misure di riduzione siano integrate da misure di adattamento. Le misure di adattamento servono a mitigare le conseguenze più gravi o imminenti del cambiamento climatico, tenendo conto di tutte le esigenze di protezione particolari rilevanti. Tali misure devono essere attuate e applicate efficacemente, in conformità alla migliore scienza disponibile e in linea con la struttura generale degli obblighi di protezione dello Stato (supra n. marg. 34).

48 Nel decidere se uno Stato si è attenuto al proprio potere discrezionale, sono particolarmente rilevanti le garanzie procedurali a disposizione degli interessati (supra n. marg. 36). Ciò vale non solo per la definizione degli obiettivi, ma anche per la scelta (politica) dei mezzi per raggiungerli.

– Le informazioni di cui dispongono le autorità e che sono rilevanti per l'elaborazione e l'attuazione delle pertinenti regolamentazioni e misure per combattere il cambiamento climatico devono essere rese accessibili al pubblico e, in particolare, alle persone che potrebbero essere interessate dalle norme e dalle misure in questione o dalla loro assenza.
– Devono essere disponibili garanzie procedurali che garantiscano l'accesso del pubblico alle conclusioni tratte dagli studi pertinenti.
– Devono essere messe a disposizione procedure che consentano di poter prendere in considerazione, nel processo decisionale, le opinioni del pubblico e, in particolare, gli interessi di coloro che sono o rischiano di essere toccati dalle norme e dalle misure in questione o dalla loro assenza.

4. Emissioni dovute ai consumi

49 Sarebbe difficile, se non impossibile, discutere della responsabilità della Svizzera per l'impatto delle sue emissioni di gas serra sui diritti umani senza tenere conto delle emissioni in Svizzera dovute all'importazione di merci e al loro consumo.

K. Per quali motivi il Tribunale è giunto alla conclusione che la Svizzera (stato: 14 febbraio 2024) non ha adempiuto all'obbligo di protezione in materia di diritti umani ai sensi dell'art. 8 CEDU?

50 L'attuale legge sul CO_2 del 2011 (in vigore dal 2013)[13] prevedeva una riduzione complessiva delle emissioni di gas serra del 20% entro il 2020 rispetto ai livelli del 1990.

- Il Consiglio federale stesso ha tuttavia rilevato che i Paesi industrializzati (come la Svizzera) avrebbero dovuto ridurre le proprie emissioni entro il 2020 del 25-40% rispetto al 1990 e che l'obiettivo di riduzione del 20% entro il 2020 era insufficiente anche alla luce degli obiettivi a lungo termine.
- Le autorità stesse hanno inoltre constatato che l'obiettivo di riduzione di gas serra per il 2020 non era stato raggiunto. Tra il 2013 e il 2020 la Svizzera ha ridotto in media le proprie emissioni di gas serra di circa l'11% rispetto al livello del 1990, il che sta a indicare che le misure finora adottate dalle autorità sono insufficienti.

51 Nel dicembre 2017 il Consiglio federale ha presentato una revisione della legge sul CO_2 del 2011, per il periodo 2020-2030, che prevedeva una riduzione complessiva del 50% delle emissioni di gas serra. La stessa contemplava una riduzione nazionale del 30% entro il 2030 rispetto ai valori del 1990, mentre il resto doveva essere raggiunto mediante misure adottate all'estero. Questa proposta di revisione della legge sul CO_2 è stata respinta in votazione popolare a giugno 2021. Secondo il governo, ciò non significava il rifiuto da parte delle cittadine e dei cittadini della necessità di combattere il riscaldamento globale o di ridurre le emissioni nazionali di gas serra, ma piuttosto quello dei mezzi proposti allo scopo. In tale contesto, la Corte EDU sottolinea nuovamente che agli Stati viene concesso un ampio potere discrezionale nella scelta dei mezzi per combattere il cambiamento climatico.

- In ogni caso, a prescindere dall'organizzazione costituzionale della procedura legislativa, è un dato di fatto che dopo il referendum sussisteva un vuoto normativo per il periodo successivo al 2020. La Svizzera ha cercato di colmare questa lacuna, ponendo in vigore il 17 dicembre 2021 una revisione parziale dell'esistente legge sul CO_2 del 2011, la quale fissava l'obiettivo di riduzione dell'1,5% all'anno rispetto al 1990 per gli anni 2021-2024, con riserva dal 2022 di poter raggiungere un massimo del 25% di tale riduzione mediante misure all'estero.
- Il periodo successivo al 2024 è così rimasto non regolamentato e dunque incompatibile con il requisito dell'esistenza di misure generali che stabiliscano le misure di riduzione della Svizzera in sintonia con un piano per il raggiungimento della neutralità in termini di emissioni di CO_2 [§ 550 a) della sentenza].
- La Svizzera ha così omesso di adempiere al suo obbligo di creare un quadro normativo con gli obiettivi necessari [§ 550 a) - b) della sentenza]. In tale contesto,

13 Legge federale sulla riduzione delle emissioni di CO_2 (legge sul CO_2), RS 641.71.

l'IPCC sottolinea che le decisioni adottate e le misure attuate in questo decennio avranno un impatto sul presente e sull'arco di migliaia di anni.

52 Il 30 settembre 2022 è stata emanata la legge federale sugli obiettivi in materia di protezione del clima, l'innovazione e il rafforzamento della sicurezza energetica (LoCli), che rispecchia gli impegni del contributo determinato a livello nazionale (*Nationally Determined Contribution*, NDC) aggiornato ai sensi dell'Accordo di Parigi sul clima. Tale legge, confermata con un referendum soltanto il 18 giugno 2023, ma non ancora entrata in vigore, prevede un obiettivo di emissioni nette pari a zero entro il 2050. A tal fine, le emissioni di gas serra devono essere ridotte «il più possibile». È inoltre previsto un obiettivo intermedio per il 2040 (riduzione del 75% rispetto al livello del 1990) nonché per gli anni 2031-2040 (in media almeno il 64%) e per il periodo 2041-2050 (in media almeno l'89% rispetto al 1990). Sono stati inoltre fissati dei valori indicativi per la riduzione delle emissioni nei settori dell'edilizia, dei trasporti e dell'industria per il 2040 e il 2050.

– La Corte EDU constata in questo contesto che, pur fissando gli obiettivi e le direttive generali, le misure concrete per raggiungere tali obiettivi non sono menzionate nella legge, ma devono essere stabilite dal Consiglio federale e proposte «per tempo» al Parlamento (art. 11 cpv. 1 LoCli).

– Inoltre, l'emanazione delle misure concrete dovrà avvenire nell'ambito della legge sul CO_2 del 2011 (art. 11 cpv. 2 LoCli) che, come menzionato (n. marg.50), nella sua forma attuale non può essere considerata un quadro normativo sufficiente.

– Si deve altresì notare che la nuova regolamentazione contenuta nella LoCli riguarda solo gli obiettivi intermedi per il periodo successivo al 2031. Considerato che la legge sul CO_2 del 2011 prevede una regolamentazione a livello di legge degli obiettivi intermedi solo fino al 2024 (n. marg.51), ciò significa che il periodo tra il 2025 e il 2030, fino all'emanazione di nuove disposizioni legislative non è ancora disciplinato.

53 In tali circostanze, data la grande urgenza del cambiamento climatico e l'attuale mancanza di un quadro giuridico soddisfacente, per la Corte EDU è difficile ritenere che il mero obbligo legislativo di adottare «per tempo» misure concrete, come previsto dalla LoCli, adempia al dovere dello Stato di provvedere a una protezione efficace delle persone soggette alla sua giurisdizione dagli effetti negativi del cambiamento climatico sulla loro vita e sulla loro salute e di garantire effettivamente tale protezione nella pratica. L'introduzione della LoCli non è sufficiente a colmare le lacune constatate nel quadro giuridico attuale.

54 L'Associazione Anziane per il clima Svizzera ha presentato una stima del bilancio residuo di CO_2 in Svizzera nella situazione attuale, tenendo conto anche degli obiettivi e dei percorsi introdotti dalla LoCli. Con riferimento alla determinazione del bilancio globale di CO_2 da parte dell'IPCC e ai dati dell'inventario svizzero dei gas serra, l'Associazione Anziane per il clima Svizzera ha presentato una stima secondo cui, ipotizzando una ripartizione globale delle emissioni pro capite uniforme, dal 2020 la Svizzera disporrebbe di un bilancio residuo di CO_2 di 0,44 $GtCO_2$, al fine di avere una possibilità del 67% di rispettare il limite di 1,5°C (o 0,33 $GtCO_2$ per una possibilità

dell'83%). In uno scenario con una riduzione delle emissioni di CO_2 del 34% entro il 2030 e del 75% entro il 2040, la Svizzera esaurirebbe il bilancio residuo all'incirca entro il 2034 (o nel 2030 con una possibilità dell'83%). Nell'ambito della sua attuale strategia climatica, la Svizzera ha quindi consentito emissioni di gas serra superiori a quelle che le competerebbero anche in caso di quantificazione secondo il principio delle «pari emissioni pro capite».

55 Il governo svizzero si appella alla Policy Brief del 201214 per giustificare la mancanza di un bilancio di CO_2 specifico per la Svizzera. Sostiene inoltre che non esiste un metodo consolidato per determinare il bilancio di CO_2 di un Paese e ammette che la Svizzera non ne ha stabilito uno. Esso ha argomentato che la politica climatica nazionale della Svizzera può essere considerata quale approccio simile alla fissazione di un bilancio di CO_2 e che tale politica climatica si basa su valutazioni interne pertinenti,15 elaborate nel 2020 ed espresse negli NDC.

56 La Corte EDU constata al riguardo che

- non è possibile istituire una regolamentazione efficace in materia di cambiamento climatico senza quantificare le limitazioni nazionali delle emissioni di gas serra mediante un bilancio di CO_2 o in altro modo [§ 550 a) della sentenza];
- l'IPCC ha sottolineato l'importanza dei bilanci di CO_2 e delle strategie a zero emissioni nette (§ 116 della sentenza), situazione che non può essere compensata facendo appello ai NDC dello Stato nell'ambito dell'Accordo di Parigi sul clima;
- è convincente l'argomentazione della Corte costituzionale federale della Repubblica federale di Germania, che ha respinto la tesi secondo la quale sarebbe impossibile determinare un bilancio nazionale di CO_2 facendo riferimento, tra l'altro, al principio delle responsabilità comuni ma differenziate nell'ambito dell'UNFCCC e dell'Accordo di Parigi sul clima. Tale principio esige che gli Stati agiscano sulla base dell'equità e secondo le loro rispettive capacità;
- le misure e i metodi che determinano i dettagli della politica climatica di uno Stato rientrano nel suo potere discrezionale. In assenza di un provvedimento nazionale che tenti di quantificare il bilancio di CO_2 residuo della Svizzera, essa non rispetta tuttavia il proprio obbligo di regolamentazione ai sensi dell'art. 8 CEDU.

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14 BRETSCHGER, Climate Policy and Equity Principles: Fair Burden Sharing in a Dynamic World, Center of Economic Research at ETH Zurich, Policy Brief 12/16, marzo 2012, consultabile all'indirizzo https://www.klimaseniorinnen.ch/wp-content/uploads/2023/04/230329_written-submission-Switzerland_annex_1_Bretschger_Policy_Brief.pdf.

15 Swiss Federal Office for the Environment, internal working document, Cambiamenti climatici e Accordo di Parigi: quale NDC per la Svizzera è «equo e ambizioso»? (in tedesco) 2020, consultabile all'indirizzo https://www.klimaseniorinnen.ch/wp-content/uploads/2023/04/230329_written-submission-Switzerland_annex_2_internal_working_document.pdf.

L. In che misura e nei confronti di chi la Svizzera ha violato l'accesso alla giustizia (art. 6 CEDU)?

57 L'articolo 6 della CEDU non può essere invocato per adire un tribunale allo scopo di costringere il Parlamento a emanare disposizioni legislative se ciò non è previsto dal diritto nazionale. Di conseguenza, le richieste di misure legislative e regolamentari formulate a livello nazionale non rientrano nel campo di applicazione dell'art. 6 CEDU. L'attuazione efficace delle misure di riduzione ai sensi del diritto vigente, che le parti ricorrenti hanno parimenti richiesto, è tuttavia una questione che può rientrare nel campo di applicazione dell'art. 6 CEDU.

58 Il diritto alla vita ai sensi dell'art. 10 Cost., conformemente alla costante giurisprudenza della Corte EDU, è una questione civile. Esisteva indubbiamente una reale e seria controversia sul rispetto di tale diritto. Nel merito dell'ulteriore requisito, ossia che l'esito del procedimento deve essere «direttamente decisivo» per i diritti delle parti ricorrenti, la Corte EDU constata quanto segue.

- L'Associazione Anziane per il clima Svizzera ha dimostrato di avere un legame effettivo e sufficientemente stretto con la fattispecie contestata e con le persone che cercano protezione dalle ricadute negative del cambiamento climatico sulla loro vita, sulla loro salute e sulla loro qualità di vita. L'obiettivo dell'Associazione era quello di difendere i diritti civili specifici dei suoi membri in relazione alle ricadute negative del cambiamento climatico, di fungere da mezzo per difendere i diritti delle persone colpite dal cambiamento climatico e per cercare di ottenere un correttivo adeguato alle omissioni dello Stato.
- Nella misura in cui una causa riflette tale dimensione collettiva, il requisito di un esito processuale «direttamente decisivo» del procedimento per i diritti deve essere inteso nel senso più ampio che mira a una forma di correttivo degli atti e delle omissioni delle autorità che ledono i diritti civili dei membri ai sensi del diritto nazionale.
- In questo contesto si rinvia alle constatazioni sulla legittimazione all'azione delle associazioni (n. marg. 21 segg.); segnatamente all'importante ruolo svolto dalle associazioni nella difesa di determinati interessi nell'ambito della protezione dell'ambiente, nonché all'importanza particolare delle misure collettive in relazione al cambiamento climatico, le cui conseguenze non sono specificatamente circoscritte a determinate persone.
- Per quanto riguarda le ricorrenti individualmente, per motivi analoghi a quelli esposti in relazione all'art. 8 CEDU (§§ 527-535 della sentenza), non si può invece ritenere che esse abbiano dimostrato che le misure richieste dalle autorità – ossia l'effettiva attuazione di misure di riduzione secondo il diritto nazionale vigente – avrebbero avuto da sole degli impatti sufficientemente diretti e certi sui loro diritti individuali in relazione al cambiamento climatico.

59 L'art. 6 CEDU è pertanto applicabile al ricorso dell'Associazione Anziane per il clima Svizzera, ma non a quello delle singole ricorrenti.

60 Il diritto all'accesso a un tribunale ai sensi dell'art. 6 CEDU comprende non solo il diritto di avviare un procedimento, ma anche il diritto di ottenere una pronuncia giudiziaria nel merito di una controversia. Nel caso in esame, la fondatezza delle allegazioni dell'Associazione Anziane per il clima Svizzera non è stata esaminata nel procedimento nazionale, il che costituisce una limitazione di tale diritto.

61 La Corte EDU deve pertanto esaminare se l'accesso a un tribunale per quanto riguarda la richiesta di attuazione efficace delle misure di riduzione sia stato limitato secondo il diritto vigente in modo o in misura tale da pregiudicare l'essenza di tale diritto.

- La richiesta attuazione effettiva di misure di riduzione secondo il diritto vigente non può essere automaticamente considerata quale *actio popularis* o quale questione politica. Questa posizione è conforme all'argomentazione esposta al § 436 della sentenza nel merito degli effetti del cambiamento climatico sui diritti umani e dell'urgente necessità di far fronte alle minacce derivanti dal cambiamento climatico.
- Le constatazioni dei tribunali nazionali, ai cui sensi rimaneva ancora un po' di tempo per evitare che il riscaldamento globale raggiungesse il limite critico, non erano fondate su una disamina sufficiente delle conoscenze scientifiche in materia di cambiamento climatico già presenti all'epoca dei fatti e sul generale riconoscimento dell'urgenza riguardo alle ricadute presenti e inevitabili in futuro del cambiamento climatico su diversi aspetti dei diritti umani.
- Difatti, le prove e le conoscenze scientifiche esistenti sull'urgenza di far fronte alle ricadute negative del cambiamento climatico, compreso il serio rischio della loro inevitabilità e irreversibilità, suggeriscono che vi fosse l'urgente necessità di assicurare la tutela legale dei diritti umani.
- Nemmeno le autorità nazionali si sono chinate, basandosi su considerazioni inadeguate e insufficienti, sul contenuto delle allegazioni dell'Associazione Anziane per il clima Svizzera.

62 La Svizzera ha limitato il diritto dell'Associazione Anziane per il clima Svizzera di adire un tribunale in un modo e in una misura tali da pregiudicarne l'essenza. Essa ha così violato l'art. 6 CEDU.

63 In considerazione di questo contesto, è opportuno evidenziare il ruolo chiave che i tribunali nazionali hanno svolto e svolgeranno nelle controversie giuridiche connesse al cambiamento climatico. Ciò si riflette nella giurisprudenza esistente in alcuni Stati membri del Consiglio d'Europa, la quale sottolinea l'importanza dell'accesso a un tribunale in questo settore. Tenuto conto dei principi di responsabilità condivisa e di sussidiarietà, compete in primo luogo alle autorità nazionali, compresi i tribunali, di garantire il rispetto degli obblighi derivanti dalla CEDU.

II. Allegato (estratti della sentenza della Grande Camera della Corte europea dei diritti dell'uomo del 9 aprile 2024)

A. Facts in relation to climate change emerging from the material available to the Court

103. With a view to its examination of the present case, and having regard to the two other cases being examined by the Grand Chamber (see paragraph 5 above), in which rulings are being delivered on the same day, as well as other pending cases stayed at the Chamber level, ***the Court deems it necessary to highlight the following factual elements which emerge from the material available to it****.*

106. The Court further notes that by defining the Paris Agreement targets the States formulated, and agreed to, the overarching goal of limiting warming 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", recognising that this would significantly reduce the risks and impacts of climate change (Article 2 § 1 (a)). Since then, scientific knowledge has developed further and States have recognised that "the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C" and ***thus resolved "to pursue further efforts to limit the temperature increase to 1.5°C" (see Glasgow Climate Pact, paragraph 21****, and Sharm el-Sheikh Implementation Plan, paragraph 4).*

107. (...) The IPCC report in question – IPCC 2018 Special report "1.5°C global warming" (...) – found that (...) any increase in global temperature (such as +0.5°C) was projected to affect human health, with primarily negative consequences (high confidence). Lower risks were projected at 1.5°C than at 2°C for heat-related morbidity and mortality (very high confidence), and for ozone-related mortality if emissions needed for ozone formation remained high (high confidence).

108 (...) In particular, limiting warming to 1.5°C implied [according to IPCC 2018 Special report "1.5°C global warming"] reaching net zero CO_2 emissions ***globally*** *around 2050 and concurrent deep reductions in emissions of non-CO2 forcers (high confidence).*

109. The IPCC report [IPCC 2018 Special report "1.5°C global warming"] sought to quantify mitigation requirements in terms of 1.5°C pathways that refer to "carbon budgets". The report explained that cumulative CO2 emissions would be kept within a budget by reducing global annual CO2 emissions to net zero. This assessment suggested a remaining budget of about 420 GtCO2 for a ***two-thirds chance*** *of limiting warming to* ***1.5°C****, and of about* ***580 GtCO2 for an even chance*** *(medium confidence). At the same time, staying within a remaining carbon budget of 580 GtCO2 implied that CO_2 emissions would have to reach* ***carbon neutrality in about thirty years****, reduced to twenty years for a 420 GtCO2 remaining carbon budget (high confidence). Moreover, non-CO2 emissions contributed to peak warming and affected the remaining carbon budget.*

110. In its subsequent Assessment Reports ("AR"), the IPCC came to similar conclusions confirming and updating its findings in the 2018 Special Report. (...) The report also confirmed the IPCC's earlier findings (high confidence) that there was a near-linear relationship between cumulative anthropogenic CO2 emissions and the global warming they caused. Thus, ***limiting human-induced global warming to a specific level required limiting cumulative CO2 emissions, reaching at least net***

zero CO2 emissions, together with strong reductions in other GHG emissions. *Furthermore, the report nuanced the relevant estimated remaining carbon budgets from the beginning of 2020.* ***It explained that to have a 67% chance of meeting the 1.5°C limit, the remaining global carbon budget was 400 GtCO2 and to have an 83% chance, 300 GtCO2.***

111. In AR6 "Climate Change 2022: Mitigation of Climate Change" (…), the IPCC found that total net anthropogenic GHG emissions had continued to rise during the period 2010-2019. (…) The report further pointed out that a consistent expansion of policies and laws addressing mitigation had led to the avoidance of emissions that would otherwise have occurred. However, global GHG emissions in 2030 associated with the implementation of NDCs announced prior to the Glasgow Climate Conference (COP26) would make it likely that warming would exceed 1.5°C during the twenty-first century. It was likely that limiting warming to below 2°C would then rely on a rapid acceleration of mitigation efforts after 2030. ***Policies implemented by the end of 2020 were projected to result in higher global GHG emissions than those implied by NDCs*** *(high confidence). In other words, according to the findings of the IPCC, the* ***world was currently on a trajectory that would lead to very significant adverse impacts for human lives and well-being***.

113. Furthermore, the report [AR6 "Climate Change 2022: Mitigation of Climate Change"] stressed that global net zero CO2 emissions would be reached in the early 2050s in modelled pathways that limited warming to 1.5°C with no or limited overshoot, and around the early 2070s in modelled pathways that limited warming to 2°C. These pathways also included deep reductions in other GHG emissions. Reaching and sustaining global net zero GHG emissions would result in a gradual decline in warming (high confidence).

114. In the latest AR6 "Synthesis Report: Climate Change 2023", the IPCC noted that human activities, principally through GHG emissions (increasing with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals), had unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 levels between 2011 and 2020. According to the report, human-caused climate change was already affecting many weather and climate extremes in every region across the globe, which had led to widespread adverse impacts and related losses and damages to nature and people (high confidence).

115. The IPCC further stressed that policies and laws addressing mitigation (…) had already been deployed successfully in some countries, leading to avoided and in some cases reduced or removed emissions (…). Global GHG emissions in 2030 implied by NDCs announced by October 2021 made it likely that warming would exceed 1.5°C during the twenty-first century and made it harder to limit warming below 2°C. There were gaps between projected emissions from implemented policies and those from NDCs. Moreover, finance flows fell short of the levels needed to meet climate goals across all sectors and regions (…). (.) At the same time, every increment of global warming would intensify multiple and concurrent hazards. However, deep, rapid and sustained reductions in GHG emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years (…). While some future changes were unavoidable and/or irreversible, they could be limited by deep, rapid and sustained global GHG emissions reductions. The likelihood of abrupt and/or irreversible changes increased

with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increased with higher global warming levels (…). Adaptation options that were feasible and effective today would become constrained and less effective with increasing global warming; losses and damages would also increase and additional human and natural systems would reach adaptation limits (high confidence).

116. In the same report, the IPCC stressed the ***importance of carbon budgets and policies for net zero emissions****. It noted that limiting human-caused global warming required net zero CO2 emissions. Cumulative carbon emissions until the time of reaching net-zero CO2 emissions and the level of GHG emission reductions* ***this decade*** *would largely determine whether warming could be limited to 1.5°C or 2°C. Projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) (…). As regards mitigation pathways, the IPCC noted that all global modelled pathways that limited warming to 1.5°C (>50%) with no or limited overshoot, and those that limited warming to 2°C (>67%), involved rapid and deep and, in most cases, immediate GHG emissions reductions in all sectors this decade.* ***Global net zero CO2 emissions would be reached for these pathway categories in the early 2050s*** *and around the early 2070s, respectively (…).*

117. However, the IPCC stressed that if warming exceeded a specified level such as 1.5°C, it could gradually be reduced again by achieving and sustaining net negative global CO2 emissions, which would require additional deployment of carbon dioxide removal, compared to pathways without overshoot. This would, however, lead to greater feasibility and sustainability concerns as overshoot entailed adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot (…).

118. The IPCC stressed the ***urgency of near-term integrated climate action****. It noted that climate change was a threat to human well-being and planetary health. There was a* ***rapidly closing window of opportunity*** *to secure a liveable and sustainable future for all (…). (…).* ***The choices and actions implemented in this decade would have impacts now and for thousands of years*** *(…).*

119. According to the IPCC, deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (…). On the other hand, ***delayed mitigation and adaptation action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages*** *(…).*

120. The IPCC noted that effective climate action was enabled by political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies and enhanced access to finance and technology. Clear goals, coordination across multiple policy domains and inclusive governance processes facilitated effective climate action. Regulatory and economic instruments could support deep emissions reductions and climate resilience if scaled up and applied widely (…).

B. Relevant legal framework and practice

64 In paras. 138 ff., the Court refers to COP 27 (November 22) and COP 28 (December 23). Regarding the latter, the Court referred to the synthesis report on the technical dialogue of the First Global Stocktake under the Paris Agreement:

> *139. In preparation for the UNFCCC Conference of the Parties (COP28) in Dubai, held between 30 November and 12 December 2023, the synthesis report on the technical dialogue of the first global stocktake under the Paris Agreement, made the following key findings.*
>
> *(…)*
>
> *Key finding 3: systems transformations open up many opportunities, but rapid change can be disruptive. A focus on inclusion and* ***equity*** *can increase ambition in climate action and support.*
>
> *Key finding 4: global emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to raise ambition and implement existing commitments* ***in order to limit warming to 1.5°C above pre-industrial levels****.*
>
> *Key finding 5: much more ambition in action and support is needed in implementing domestic mitigation measures and setting more ambitious targets in NDCs to realize existing and emerging opportunities across contexts,* ***in order to reduce global GHG emissions by 43 per cent by 2030 and further by 60 per cent by 2035 compared with 2019 levels and reach net zero CO2 emissions by 2050 globally.***
>
> *(…)*
>
> *Key finding 14: scaled-up mobilization of support for climate action in developing countries entails* ***strategically deploying international public finance, which remains a prime enabler for action****, and continuing to enhance effectiveness, including access, ownership and impacts.*
>
> *Key finding 15:* **making financial flows** *– international and domestic, public and private –* ***consistent with a pathway towards low GHG emissions*** *and climate-resilient development entails creating opportunities to unlock trillions of dollars and shift investments to climate action across scales.*
>
> *(…).*

65 In paras. 140, the Court refers to relevant parts of the COP 28 First Global Stocktake:

> *140. The relevant parts of the COP28 First Global Stocktake provide as follows:*
>
> *"(…)*
>
> *Also recalling Article 2, paragraph 2, of the Paris Agreement, which provides that the 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,*

5. Expresses serious concern that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and ***emphasizes the need for urgent action and support to keep the 1.5°C goal within reach and to address the climate crisis in this critical decade****;*

6. Commits to accelerate action ***in this critical decade*** *on the* ***basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances*** *and in the context of sustainable development and efforts to eradicate poverty;*

16. Notes the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(…)

(c) ***That feasible, effective and low-cost mitigation options are already available in all sectors to keep 1.5°C within reach in this critical decade*** *with the necessary cooperation on technologies and support;*

17. Notes with concern the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had earlier indicated that developed countries ***must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved****;*

II. Collective progress towards achieving the purpose and long-term goals of the Paris Agreement … A. Mitigation …

25. ***Expresses concern that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted*** *and acknowledges that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5°C; …*

28. Further recognizes the need for deep, rapid and sustained reductions in [GHG] emissions in line with 1.5°C pathways and calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches: …

(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, ***accelerating action in this critical decade****, so as to achieve net zero by 2050* ***in keeping with the science****; (…)"*

66 In paras. 141 ff., the Court refers to the Aarhus Convention:

141. The relevant parts of the 1998 Aarhus Convention read as follows:

"(…)

Article 2 Definitions

4. 'The public' means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

*5. 'The **public concerned'** means the **public affected** or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."*

142. The relevant parts of the Aarhus Convention Implementation Guide provide as follows (…):

*"While narrower than the 'public,' the 'public concerned' is nevertheless still very broad. **With respect to the criterion of 'being affected', this is very much related to the nature of the activity in question**. Some of the activities subject to article 6 of the Convention may potentially affect a large number of people. For example, in the case of pipelines, the public concerned is usually in practice counted in the thousands, while in the case of nuclear power stations the competent authorities may consider the public concerned to count as many as several hundred thousand people across several countries.*

(…)"

67 In para. 145, the Court states that 45 out of 46 member States of the council of Europe voted in favour of the adoption of the UN Resolution 76/300 on the human right to a clean, healthy and sustainable environment on 28 July 2022.

144. Upon the invitation of the Human Rights Council formulated in its Resolution 48/13 of 8 October 2021, the General Assembly of the United Nations adopted its Resolution 76/300 on the human right to a clean, healthy and sustainable environment on 28 July 2022.

145. It was adopted with 161 votes in favour (of the 169 member States present), 8 abstentions and no votes against. 45 of the 46 member States of the Council of Europe voted in favour.

147. Its four operative paragraphs provide as follows:

"(…)

*3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment **requires the full implementation of the multilateral environmental agreements under the principles of international environmental law**;*

4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all."

68 In para. 148, the Court refers to the first Resolution on the issue on global climate protection:

*148. **Nearly every year since** its first Resolution on the subject, namely Resolution no. 43/53 on the protection of global climate for present and future generations of mankind adopted on 6 December **1988**, **the issue of global climate protection for future generations has been put on the agenda** of the General Assembly, resulting in the adoption of numerous resolutions.*

69 In para. 164, the Court refers to the 2019 report to the General Assembly (A/74/161), where the Special Rapporteur built on the 2018 framework principles on human rights and the environment and detailed the content of states' obligations:

164. In the 2019 report to the General Assembly (A/74/161), the Special Rapporteur built on the above-mentioned 2018 framework principles on human rights and the environment (…) and detailed the content of State obligations (…):

"(…)

65. With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right. States also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage.

(…)

68. States have an obligation to cooperate to achieve a low-carbon, climate resilient and sustainable future, which means sharing information; the transfer of zero-carbon, low-carbon and high-efficiency technologies from wealthy to less wealthy States; building capacity; increasing spending on research and development related to the clean energy transition; honouring international commitments; and ensuring fair, legal and durable solutions for migrants and displaced persons. ***Wealthy States must contribute their fair share towards the costs of mitigation and adaptation in low-income countries, in accordance with the principle of common but differentiated responsibilities****. Climate finance to low-income countries should be composed of grants, not loans. It violates basic principles of justice to force poor countries to pay for the costs of responding to climate change when wealthy countries caused the problem.*

69. Climate actions, including under new mechanisms being negotiated pursuant to article 6 of the Paris Agreement, must be designed and implemented to avoid threatening or violating human rights (…).

(…)

74. A failure to fulfil international climate change commitments is a prima facie violation of the State's obligations to protect the human rights of its citizens. …

75. A dramatic change of direction is needed. To comply with their human rights obligations, developed States and other large emitters must reduce their emissions at a rate consistent with their international commitments. To meet the Paris target of limiting warming to 1.5°C, States must submit ambitious nationally determined contributions by 2020 that will put the world on track to reducing [GHG] emissions by at least 45 per cent by 2030 (as calculated by the Intergovernmental Panel on Climate Change). All States should prepare rights-based deep decarbonization plans intended to achieve net zero carbon emissions by 2050, in accordance with article 4, paragraph 19, of the Paris Agreement. Four main categories of actions must be taken: addressing society's addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States."

70 In para. 192, the Court noted that the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution entitled "The climate crisis and the rule of law", including:

> *"5.1 promote the rule of law and employ a transparent, accountable and democratic legislative process for implementing the aim of 'net zero emissions', based on **clear and credible plans** to meet commitments to keep the global temperature increase **in line with** the preferred objective of the Paris Agreement, amounting to an increase in average temperatures of **1.5°C**;"*

71 In para. 199, the Court notes that in 2020, the European Commission for Democracy through Law ("the Venice Commission") addressed the question of judicial control in the field of environmental protection:

> *"(...) However, an important argument to counter such a conclusion is that the protection of the environment is not like the traditional human rights conflict, where the minority needs protection against the majority. **In the area of protection of the environment, there is a totally new dimension: the protection of the rights of future generations.** As the future generations do not take part in present day democracy and do not vote in present day elections, the judicial branch appears to be best placed to protect the future generations against the decisions of present-day politicians."*

72 In para. 200 the Court refers to Appendix V of the Reykjavík Declaration where the following was declared:

> *"(...) Together we commit to:*
>
> *v. initiating the 'Reykjavík process' of strengthening the work of the Council of Europe in this field, with the aim of making the environment a visible priority for the Organisation. The process will focus and streamline the Organisation's activities, **with a view to promoting co-operation among member States**. We will identify the challenges raised by **the triple planetary crisis of pollution, climate change and loss of biodiversity** for human rights and contribute to the development of common responses thereto, while facilitating the participation of youth in these discussions. We will do this by enhancing and co-ordinating the existing Council of Europe activities related to the environment and we encourage the establishment of a new **intergovernmental committee on environment and human rights** ('Reykjavík Committee')."*

73 In paras. 201 ff. the Court lays down the EU law, also stating that in the EU, the legality of acts can be reviewed (Art. 263 of the Treaty on European Union). The Court further notes in para. 211 that the European Climate Law also requires the projected indicative Union GHG budget to be established and based on the best available science.

74 In para. 227 the Court noted that in January 2023, a new request for an Advisory Opinion was submitted to the Inter-American Court of Human Rights by Colombia and Chile. They asked the court to clarify the scope of State obligations, both in their individual and collective dimensions, within the framework of international human rights law, to respond to the climate emergency. This request emphasised paying special attention to the differentiated impacts of this emergency on individuals from diverse

regions and population groups, as well as on nature and on human survival on the planet.

75 In para. 246 the Court refers to the Vice-President of the Conseil d'État, Bruno Lasserre, who made the following remarks on the first decisions given by the administrative courts in an address to the Court of Cassation on 21 May 2021 entitled "L'environnement: les citoyens, le droit, les juges" ("The environment: citizens, the law and judges"):

«Finally, the Conseil d'État has adapted to current efforts to tackle climate change by inaugurating a new type of review, which could be termed a 'pathway review'. The time-limits laid down in law for achievement of the targets may be distant – 2030, 2040, and even 2050 – ***but for the courts to wait ten, twenty or thirty years to verify whether they have been achieved would mean denying the urgency of taking action now and depriving their review of all meaningful effect from the outset, given the very high inertia of the climate system****. A pathway review is thus akin to monitoring compliance in advance. This means that* ***the court must be satisfied,*** *at the point at which it takes its decision,* ***not that the targets have been achieved, but that they may be achieved, that they are in the process of being achieved, that they form part of a credible and verifiable pathway.****»*

C. The Law

1. Scope of the complaint

279. In the case at hand, it is important to note that it has been accepted in the reports by the relevant Swiss authorities, and elsewhere, that the GHG emissions attributable to Switzerland through the import of goods and their consumption form a significant part (an estimate of 70% for 2015) of the overall Swiss GHG footprint. (…).

280. It ***would therefore be difficult, if not impossible, to discuss Switzerland's responsibility for the effects of its GHG emissions on the applicants' rights without taking into account the emissions generated through the import of goods and their consumption*** *or, as the applicants labelled them, "embedded emissions".*

283. (…) This is, of course, ***without prejudice to the examination of the actual effects of "embedded emissions"*** *(namely Switzerland's import of goods for household consumption)* ***on the State's responsibility under the Convention****.*

2. Preliminary points regarding the alleged violation of Art. 2 and 8 ECHR

410. At the outset, the Court notes that climate change is one of the most pressing issues of our times. (…). The Court is also aware that the damaging effects of climate change raise an issue of intergenerational burden-sharing (…) and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities.

411. The Court, however, can deal with the issues arising from climate change only within the limits of the exercise of its competence under Article 19 of the Convention, (…). In this regard, the Court is, and must remain, mindful of the fact that to a large extent measures designed to combat climate change and its adverse effects require

legislative action both in terms of the policy framework and in various sectoral fields. In a democracy, which is a fundamental feature of the European public order expressed in the Preamble to the Convention together with the principles of subsidiarity and shared responsibility (…), such action thus necessarily depends on democratic decision-making.

412. Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements. The legal basis for the Court's intervention is always limited to the Convention, (…). The relevant legal framework determining the scope of judicial review by domestic courts may be considerably wider and will depend on the nature and legal basis of the claims introduced by litigants.

413. At the same time, the Court must also be mindful of the fact that the ***widely acknowledged inadequacy of past State action*** *to combat climate change globally entails an aggravation of the risks of its adverse consequences, and the ensuing threats arising therefrom, for the enjoyment of human rights – threats already recognised by governments worldwide.* ***The current situation therefore involves compelling present-day conditions, confirmed by scientific knowledge, which the Court cannot ignore in its role as a judicial body tasked with the enforcement of human rights****. Given the necessarily primary responsibility of the legislative and executive branches and the inherently collective nature of both the consequences and the challenges arising from the adverse effects of climate change, however, the question of who can seek recourse to judicial protection under the Convention in this context is not just a question of who can seek to address this common problem through the courts, first domestically and subsequently by engaging the Court, but raises wider issues of the separation of powers.*

415. The Court's existing case-law in environmental matters concerns situations involving specific sources from which environmental harm emanates. (…)

416. In the context of climate change, the key characteristics and circumstances are significantly different. (…)

418. (…) However, ***without effective mitigation*** *(which is at the centre of the applicants' arguments in the present case; …),* ***adaptation measures cannot in themselves suffice to combat climate change*** *(…).*

420. In this connection, the Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations. While the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change (see paragraph 119 above) and that, at the same time, they have no possibility of participating in the relevant current decision-making processes. By their commitment to the UNFCCC, the States Parties have undertaken the obligation to

protect the climate system for the benefit of present and future generations of humankind (see paragraph 133 above; Article 3 of the UNFCCC). ***This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change.*** *In the present context, having regard to the prospect of aggravating consequences arising for future generations,* ***the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.***

421. Lastly, while the challenges of combating climate change are global, both the relative importance of various sources of emissions and the necessary policies and measures required for achieving ***adequate*** *mitigation and adaptation may vary to some extent from one State to another depending on several factors such as the structure of the economy, geographical and demographic conditions and other societal circumstances. Even if in the longer term, climate change poses existential risks for humankind, this does not detract from the fact that in the short term the necessity of combating climate change involves various conflicts, the weighing-up of which falls, as stated previously, within the democratic decision-making processes, complemented by judicial oversight by the domestic courts and this Court.*

422. Because of these fundamental differences, it would be neither adequate nor appropriate to follow an approach consisting in directly transposing the existing environmental case-law to the context of climate change. ***The Court considers it appropriate to adopt an approach which both acknowledges and takes into account the particularities of climate change and is tailored to addressing its specific characteristics.*** *In the present case, therefore, while drawing some inspiration from the principles set out in the Court's existing case-law, the Court will seek to develop a more appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change.*

3. General considerations relating to climate-change cases regarding alleged violation of Art. 2 and 8 ECHR

a) Causation

424. (...) In the context of human rights-based complaints against States, issues of causation (...) have a bearing on the assessment of victim status as well as the substantive aspects of the State's obligations and responsibility under the Convention.

425. The first dimension of the question of causation relates to the link between GHG emissions – and the resulting accumulation of GHG in the global atmosphere – and the various phenomena of climate change. This is a matter of scientific knowledge and assessment. The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. In general terms, this issue pertains to the legal question of how the scope of human rights protection is to be understood as regards the impacts arising for human beings from an existing degradation, or risk of degradation, in their living conditions. The third concerns the link, at the individual level, between a harm, or risk of harm, allegedly affecting specific persons or groups of

persons, and the acts or omissions of State authorities against which a human rights-based complaint is directed. The fourth relates to the attributability of responsibility regarding the adverse effects arising from climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of GHG emissions.

b) Issues of proof (first causation dimension)

429. The Court also relies on studies and reports by relevant international bodies as regards the environmental impacts on individuals (see Tătar, cited above, § 95). ***As regards climate change, the Court points to the particular importance of the reports prepared by the IPCC,*** *(...).*

430. Lastly, the Court attaches particular importance to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case (...). (...) the Court is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case.

c) Effects of climate change on the enjoyment of Convention rights (second causation dimension)

431. In recent times there has been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law (...).

432. ***The findings of the IPCC reports noted in paragraphs 107 to 120 above have not been challenged or called into doubt by the respondent or intervening States****. It should also be noted that the clear indications as regards the adverse effects of climate change, both existing and those associated with an overshoot of* ***1.5°C global temperature rise****, noted by the IPCC, have been shared by many environmental experts and scientists intervening as third parties in the present proceedings before the Court (...).*

433. Moreover, the IPCC findings correspond to the position taken, in principle, by the States in the context of their international commitments to tackle climate change. (...). ***Moreover, the respondent Government in the present case, as well as the many third-party intervener Governments, have not contested that there is a climate emergency*** *(..).*

434. ***The Court cannot ignore the above-noted developments and considerations****. On the contrary, it should be recalled that the Convention is a* ***living instrument which must be interpreted in the light of present-day conditions****, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies (see Demir and Baykara v. Turkey [GC], no. 34503/97, § 146, ECHR 2008). Indeed, an* ***appropriate and tailored approach*** *as regards the various*

*Convention issues which may arise **in the context of climate change**, (…), needs to take into account the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights.*

*436. In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that **anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5oC above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target.***

d) The question of causation and positive obligations in the climate-change context (third causation dimension)

*439. In the context of climate change, the particularity of the issue of causation becomes more accentuated. The adverse effects on and risks for specific individuals or groups of individuals living in a given place arise from aggregate GHG emissions globally, and the emissions originating from a given jurisdiction make up only part of the causes of the harm. Accordingly, the causal link between the acts or omissions on the part of State authorities in one country, and the harm, or risk of harm, arising there, is necessarily more tenuous and indirect compared to that in the context of local sources of harmful pollution. Furthermore, from the perspective of human rights, the essence of the relevant State duties in the context of climate change relates to the reduction of the risks of harm for individuals. Conversely, failures in the performance of those duties entail an aggravation of the risks involved, although the individual exposures to such risks will vary in terms of type, severity and imminence, depending on a range of circumstances. Accordingly, in this context, issues of individual victim status or the specific content of State obligations **cannot be determined on the basis of a strict conditio sine qua non requirement**.*

*440. It is therefore necessary to further adapt the approach to these matters, taking into account the special features of the problem of climate change in respect of which the State's positive obligations will be triggered, depending on a **threshold of severity of the risk of adverse consequences on human lives, health and well-being**. (…)*

e) The issue of the proportion of State responsibility (fourth causation dimension)

*442. For its part, the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). **It follows, therefore, that each State has its own share of responsibilities to take measures***

to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State *(see Duarte Agostinho and Others, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.*

444. Lastly, as regards the "drop in the ocean" argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it should be noted that in the context of a State's positive obligations under the Convention, the Court has consistently held that it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (...). In the context of climate change, this principle should also be understood in the light of Article 3 § 3 of the UNFCCC according to which States should take measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.

f) Scope of the Court's assessment

445. The Court has repeatedly stressed that no Article of the Convention is specifically designed to provide general protection of the environment as such (...)

446. At the same time, the Court has often dealt with various environmental problems deemed to affect the Convention rights of individuals, particularly Article 8 (see Hatton and Others, cited above, § 96). (...)

449. The Court is mindful of the fact that in a context such as the present one ***it may be difficult to clearly distinguish issues of law from questions of policy and political choices*** *and, therefore, of the fundamentally subsidiary role of the Convention, particularly given the complexity of the issues involved with regard to environmental policy-making (see Dubetska and Others v. Ukraine, no. 30499/03, § 142, 10 February 2011). It has stressed that national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate the relevant needs and conditions.* ***In matters of general policy, or political choices, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker is given special weight*** *(see Hatton and Others, cited above, § 97).*

450. However, this does not exclude the possibility that where complaints raised before the Court relate to State policy with respect to an issue affecting the Convention rights of an individual or group of individuals, ***this subject matter is no longer merely an issue of politics or policy but also a matter of law having a bearing on the interpretation and application of the Convention****. In such instances,* ***the Court retains competence, albeit with substantial deference to the domestic policy-maker and the measures resulting from the democratic process concerned and/or the judicial review by the domestic courts****. Accordingly, the* ***margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with a European supervision by the Court****, which*

must be satisfied that the effects produced by the impugned national measures were compatible with the Convention.

451. It follows from the above considerations that ***the Court's competence in the context of climate-change litigation cannot, as a matter of principle, be excluded****. Indeed, given the necessity of addressing the urgent threat posed by climate change, and bearing in mind the general acceptance that climate change is a common concern of humankind (…), there is force in the argument put forward by the UN Special Rapporteurs that* ***the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights*** *(…).*

g) Relevant principles regarding the interpretation of the Convention

454. The Court reiterates that it only has the authority to ensure that the Convention is complied with. (…)

455. Nevertheless, the interpretation and application of the rights provided for under the Convention can and must be influenced both by factual issues and developments affecting the enjoyment of the rights in question and also by relevant legal instruments designed to address such issues by the international community. The Court has consistently held that the Convention should be interpreted, as far as possible, in harmony with other rules of international law (ibid.). ***Moreover, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement*** *(see Fedotova and Others v. Russia [GC], nos. 40792/10 and 2 others, § 167, 17 January 2023).*

456. The ***Court cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights*** *(…). This consideration relates, in particular, to the consensus flowing from the international-law mechanisms to which the member States voluntarily acceded and the related requirements and commitments which they undertook to respect (…), such as those under the Paris Agreement. The Court must bear these considerations in mind when conducting its assessment under the Convention (…).*

457. At the same time, the Court must also bear in mind its subsidiary role and the necessity of affording the Contracting States a margin of appreciation in the implementation of policies and measures to combat climate change, as well as the need to ***observe appropriate respect for the prevailing constitutional principles, such as those relating to the separation of powers****.*

4. Victim status and standing in the climate change context regarding the alleged violation of Art. 2 and 8 ECHR

a) Victim status of individuals in the climate change context

478. The Court notes that there is ***cogent scientific evidence demonstrating that climate change has already contributed to an increase in morbidity and mortality, especially among certain more vulnerable groups****, that it actually creates such effects and that, in the absence of resolute action by States, it risks progressing to the point of being irreversible and disastrous (see paragraphs 104-120 above). At the same time, the* ***States****, being in control of the causes of anthropogenic*

climate change, ***have acknowledged the adverse effects of climate change and have committed themselves – in accordance with their common but differentiated responsibilities and their respective capabilities – to take the necessary mitigation measures*** *(to reduce GHG emissions) and adaptation measures (to adapt to climate change and reduce its impacts). These considerations indicate that a legally relevant relationship of causation may exist between State actions or omissions (causing or failing to address climate change) and the harm affecting individuals, as noted in paragraph 436 above.*

479. Given the nature of climate change and its various adverse effects and future risks, ***the number of persons affected, in different ways and to varying degrees, is indefinite****. (…). The critical issues arise from failures to act, or inadequate action. In other words, they arise from omissions. In key respects, the deficiencies reside at the level of the relevant legislative or regulatory framework. The need, in this context, for a* ***special approach to victim status****, and its delimitation, therefore arises from the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely. The outcome of legal proceedings in this context will inevitably have an effect beyond the rights and interests of a particular individual or group of individuals, and* ***will inevitably be forward-looking, in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences.***

480. That being said, the Court notes that the assessment of victim status in the present context of complaints concerning alleged omissions in general measures relating to the prevention of harm, or the reduction of the risk of harm, affecting indefinite numbers of persons ***is without prejudice to the determination of victim status in circumstances where complaints by individuals concern alleged violations arising from a specific individual loss or damage already suffered by them*** *(see, for instance, Kolyadenko and Others, cited above, §§ 150-55).*

481. The ***question for the Court in the present case*** *is* ***how and to what extent allegations of harm linked to State actions and/or omissions*** *in the context of climate change, affecting individuals' Convention rights (such as the right to life under Article 2 and/or the right to respect for private and family life under Article 8),* ***can be examined without undermining the exclusion of actio popularis from the Convention system and without ignoring the nature of the Court's judicial function****, which is by definition reactive rather than proactive.*

483. The Court's case-law on victim status is premised on the existence of a direct impact of the impugned action or omission on the applicant or a real risk thereof. However, ***in the climate-change context, everyone may be, one way or another and to some degree, directly affected, or at a real risk of being directly affected, by the adverse effects of climate change****. Leaving aside the issue of jurisdiction, the fact remains that* ***potentially a huge number of persons could claim victim status under the Convention on this basis****. While it is true that in the context of general situations/measures, the class of persons who could claim victim status "may indeed be very broad" (see Shortall and Others, cited above, § 53), it would not sit well with the exclusion of actio popularis from the Convention mechanism and the effective functioning of the right of individual application to accept the existence of victim status in the climate-change context without sufficient and careful qualification.*

484. ***If the circle of "victims" within the overall population of persons under the jurisdiction of the Contracting Parties actually or potentially adversely affected is drawn in a wide-ranging and generous manner, this would risk disrupting national constitutional principles and the separation of powers by opening broad access to the judicial branch*** *as a means of prompting changes in general policies regarding climate change. If, on the other hand,* ***this circle is drawn too tightly and restrictively, there is a risk that even obvious deficiencies or dysfunctions in government action or democratic processes could lead to the Convention rights of individuals and groups of individuals being affected without them having any judicial recourse before the Court.*** *In addition, in view of the considerations of* ***intergenerational burden-sharing*** *related to the impacts and risks of climate change,* ***the members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct representational disadvantage*** *(see paragraph 420 above). The need to ensure, on the one hand, effective protection of the Convention rights, and, on the other hand, that the criteria for victim status do not slip into de facto admission of actio popularis is particularly acute in the present context.*

485. In this regard, although the lack of State action, or insufficient action, to combat climate change does entail a situation with general effect, the Court does not consider that the case-law concerning "potential" victims (..), could be applied here. In the context of climate change, this could cover virtually anybody and would therefore not work as a limiting criterion. Everyone is concerned by the actual and future risks, in varying ways and to varying degrees, and may claim to have a legitimate personal interest in seeing those risks disappear.

486. Therefore, having regard to the special features of climate change, when determining the criteria for victim status (...) the Court will rely on distinguishing criteria. (...)

487. In sum, the Court finds that in order to claim victim status under Article 34 of the Convention in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, an applicant needs to show that he or she was personally and directly affected by the impugned failures. This would require the Court to establish, (..), the following circumstances concerning the applicant's situation: (a) the applicant must be ***subject to a high intensity of exposure to the adverse effects of climate change****, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a* ***pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm****.*

488. The ***threshold for fulfilling these criteria is especially high****. In view of the exclusion of actio popularis (...) whether an applicant meets that threshold will depend on a careful assessment of the concrete circumstances of the case. In this connection, the Court will have due regard to circumstances such as the prevailing local conditions and individual specificities and vulnerabilities. The Court's assessment will also include, but will not necessarily be limited to, considerations relating to: the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability.*

b) Standing of associations in the climate change context

489. As the Court already noted in Gorraiz Lizarraga and Others (...), in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. ***This is especially true in the context of climate change, which is a global and complex phenomenon****. It has multiple causes and its adverse effects are not the concern of any one particular individual, or group of individuals, but are rather "a common concern of humankind" (see the Preamble to the UNFCCC). Moreover,* ***in this context where intergenerational burden-sharing assumes particular importance*** *(...), collective action through associations or other interest groups* ***may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard*** *and through which they can seek to influence the relevant decision-making processes.*

490. These general observations (...) are reflected in (...) the ***Aarhus Convention****. That Convention recognises that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations" (...).*

491. The Aarhus Convention also emphasises the importance of the role which non-governmental organisations play in the context of environmental protection. (...)

492. The Court further notes that the EU has developed a set of legal instruments concerning the implementation of the Aarhus Convention (...).

493. In this connection, it should also be noted that a comparative study from 2019 found that broad legal standing was granted by law and in practice in a number of EU member States (thirteen out of twenty-eight at the time). (...)

494. The findings of the above studies were confirmed by a broader comparative survey conducted by the Court for the purposes of the present proceedings. (...)

495. In the light of the above considerations, in order to devise an approach to the matter in the present case, in which the applicant association also claims victim status, the ***Court notes some key principles which must guide its decision in that respect****.*

496. First, it is necessary to make, and to maintain, the distinction between the victim status of individuals and the legal standing of representatives who are acting on behalf of persons whose Convention rights are alleged to be violated (...). (...) there seems to be no reason to call into question the principle in the case-law that an association cannot rely on health considerations or nuisances and problems associated with climate change which can only be encountered by natural persons (...). This, by the nature of things, places a constraint on the possibility of granting victim status to an association with regard to any substantive issue under Articles 2 and/or 8 of the Convention.

497. Secondly, there has been an evolution in contemporary society as regards recognition of the importance of associations to litigate issues of climate change on behalf of affected persons. Indeed, ***climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical***

resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals *(...)*

498. The ***specific considerations relating to climate change weigh in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected****. Indeed, (...) it may be possible for an association to have standing before the Court despite the fact that it cannot itself claim to be the victim of a violation of the Convention.*

499. Moreover, the ***special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context*** *(...), speak in favour of recognising the standing of associations before the Court in climate-change cases. In view of the* ***urgency of combating the adverse effects of climate change and the severity of its consequences, including the grave risk of their irreversibility, States should take adequate action notably through suitable general measures to secure not only the Convention rights of individuals who are currently affected by climate change, but also those individuals within their jurisdiction whose enjoyment of Convention rights may be severely and irreversibly affected in the future in the absence of timely action.*** *The Court therefore considers it appropriate in this specific context to acknowledge the importance of making allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.*

500. However, (...), the ***exclusion of actio popularis*** *under the Convention requires that the possibility for associations to lodge applications before the Court* ***be subject to certain conditions****. It is clear that the Convention mechanism cannot accept an abstract complaint about a general deterioration of the living conditions* ***of people without considering its impact on a particular person or group of persons****.*

501. In this connection, when devising the ***test for the standing of associations in climate-change litigation*** *under the Convention, the Court finds it pertinent* ***to have regard to the Aarhus Convention*** *(...).The Court must, however,* ***be mindful of the difference between the basic nature and purpose of the Aarhus Convention****, which is designed to enhance public participation in environmental matters,* **and that of the Convention, which is designed to protect individuals' human rights.** *(...) The Court must be mindful of the fact that its own approach cannot result in an acceptance of actio popularis (...).*

502. (...) the following factors will determine the standing of associations before the Court in the present context. In order to be recognised as having locus standi to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) ***lawfully established*** *in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the* ***defence of the human rights of its members or other affected individuals within the jurisdiction concerned****, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be*

regarded as ***genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention****. In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice. In accordance with the specific features of recourse to legal action by associations in this context (see paragraphs 497-499 above),* ***the standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned will not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals*** *in the climate-change context as established in paragraphs 487 to 488 above.*

503. In the event of existing limitations regarding the standing before the domestic courts of associations meeting the above Convention requirements, the Court may also, in the interests of the proper administration of justice, take into account whether, and to what extent, its individual members or other affected individuals may have enjoyed access to a court in the same or related domestic proceedings.

505. Having regard to the approach outlined in paragraph 459 above, the Court will examine the issues of the victim status of applicants nos. 2-5 and the standing of the applicant association in the context of its assessment of the applicability of Articles 2 and 8 of the Convention.

5. Applicability of Art. 2 ECHR in the climate change context

509. It follows from the above-noted general principles that complaints concerning the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an ***activity which is, by its very nature, capable of putting an individual's life at risk****. Indeed, the applicants referred the Court to* ***compelling scientific evidence showing a link between climate change and an increased risk of mortality, particularly in vulnerable groups*** *(...). At present, there is nothing in the arguments provided by the respondent Government or the intervening Governments to call into question the relevance and reliability of this evidence.*

*511. The applicability of Article 2, however, cannot operate in abstracto in order to protect the population from any possible kind of environmental harm arising from climate change. (...) in order for Article 2 to apply in the context of an activity which is, by its very nature, capable of putting an individual's life at risk, there has to be a "****real and imminent" risk*** *to life. This may accordingly extend to complaints of State action and/or inaction in the context of climate change, notably in circumstances such as those in the present case, considering that the IPCC has found with high confidence that older adults are at "highest risk" of temperature-related morbidity and mortality.*

513. In sum, in order for Article 2 to apply to complaints of State action and/or inaction in the context of climate change, it needs to be determined that there is a "real and imminent" risk to life. However, such risk to life in the climate-change context must be understood in the light of the fact that there is a grave risk of inevitability and

irreversibility of the adverse effects of climate change, the occurrences of which are most likely to increase in frequency and gravity. ***Thus, the "real and imminent" test may be understood as referring to a serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity of the threat to the harm complained of by the applicant.*** *This would also imply that where the victim status of an individual applicant has been established in accordance with the criteria set out in paragraphs 487 to 488 above, it would be possible to assume that a serious risk of a significant decline in a person's life expectancy owing to climate change ought also to trigger the applicability of Article 2.*

6. Applicability of Art. 8 ECHR in the climate change context

519. Drawing on the above considerations, and having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals (...), Article 8 must be seen as encompassing a ***right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life****.*

520. However, in this context, ***the question of "actual interference" or the existence of a relevant and sufficiently serious risk entailing the applicability of Article 8 essentially depends on the assessment of similar criteria to those set out in paragraphs 487 to 488 above concerning the victim status of individuals, or in paragraph 502 above concerning the standing of associations****. These criteria are therefore determinative for establishing whether Article 8 rights are at stake and whether this provision applies. In each case, these are matters that remain to be examined on the facts of a particular case and on the basis of the available evidence.*

7. Applicability of Arts. 2 and 8 ECHR in the present case

a) Applicability of Art. 8 ECHR confirmed for association

522. The FSC and the FAC limited their assessment of standing to the individual applicants, considering it unnecessary to examine that of the applicant association. As a result, the Court does not have the benefit of the assessment of the legal status of the applicant association under domestic law or of the nature and extent of its activities within the respondent State.

523. (...) Given the membership basis and representativeness of the applicant association, as well as the purpose of its establishment, the Court accepts that it represents a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State (see paragraph 497 above). The Court, furthermore, notes that the individual applicants did not have access to a court in the respondent State. Thus, viewed overall, the grant of standing to the applicant association before the Court is in the interests of the proper administration of justice.

524. Having regard to the above considerations, the Court finds that the applicant association is lawfully established, it has demonstrated that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members and other affected individuals against the threats arising from climate change in the respondent State and that it is genuinely qualified and ***representative***

to act on behalf of those individuals who may arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention *(see paragraph 519 above).*

526. Accordingly, it follows that the applicant association has the necessary locus standi in the present proceedings and that Article 8 is applicable to its complaint. (...)

b) Applicability of Art. 8 ECHR denied for individual applicants

527. Two key criteria have been set out for recognising the victim status of natural persons in the climate-change context: (a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection (see paragraphs 487-488 above). The threshold for fulfilling these criteria is especially high (see paragraph 488 above).

529. (...) the applicants provided information and evidence showing how climate change affects older women in Switzerland, in particular in relation to the increasing occurrence and intensity of heatwaves. ***The data provided by the applicants, emanating from domestic and international expert bodies – the relevance and probative value of which has not been called into question – shows that several summers in recent years have been among the warmest summers ever recorded in Switzerland and that heatwaves are associated with increased mortality and morbidity, particularly in older women*** *(...).*

530. Older people have been found by the IPCC to belong to some of the most vulnerable groups in relation to the harmful effects of climate change on physical and mental health. Similar findings were made by the Swiss FOEN, (...) In this context, older people were found to be particularly at risk. Moreover, the adverse effects of climate change on older women, and the need to protect them from the adverse effects of climate change, have been stressed in many international documents.

531. ***While the above findings undoubtedly suggest that the applicants belong to a group which is particularly susceptible to the effects of climate change, that would not, in itself, be sufficient to grant them victim status*** *within the meaning of the criteria set out in paragraphs 487 to 488 above. It is necessary to establish, in each applicant's individual case, that the requirement of a particular level and severity of the adverse consequences affecting the applicant concerned is satisfied including the applicants' individual vulnerabilities which may give rise to a pressing need to ensure their individual protection.*

532. In this connection, as regards applicants nos. 2-4, it should be noted that in their written declarations and their medical records they provided accounts of the various difficulties they encountered during heatwaves, including the effects on their medical conditions. They also submitted that they needed to take various personal adaptation measures during heatwaves.

533. However, ***while it may be accepted that heatwaves affected the applicants' quality of life****, it is* ***not apparent*** *from the available materials* ***that they were exposed to the adverse effects of climate change, or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection, not least given the high threshold which necessarily applies to the fulfilment of the criteria set out in paragraphs 487 to 488 above****. It cannot be said that the applicants suffered from any*

critical medical condition whose possible aggravation linked to heatwaves could not be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation given the extent of heatwaves affecting that country (…). It should also be reiterated that victim status in relation to future risk is only exceptionally admitted by the Court and the individual applicants have failed to demonstrate that such exceptional circumstances exist in their regard (…).

c) Not necessary to analyse applicability of Art. 2 ECHR

536. While Article 8 undoubtedly applies in the circumstances of the present case as regards the complaints of the applicant association (…), whether those alleged shortcomings also had such life-threatening consequences as could trigger the applicability of Article 2 is more questionable. However, for the reasons stated in paragraphs 537 and 538 below, the Court finds it unnecessary to analyse further the issues pertinent to the threshold of applicability of Article 2.

8. Merits regarding Art. 8 ECHR

a) General principles

538. To a great extent the Court has applied the same principles as those set out in respect of Article 2 when examining cases involving environmental issues under Article 8 (…)

*(a) The States have a **positive obligation to put in place the relevant legislative and administrative framework designed to provide effective protection** of human health and life. (…)*

*(b) The States also have an **obligation to apply that framework effectively in practice**; indeed, regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Convention is intended to protect effective rights, not illusory ones. The relevant measures must be applied **in a timely and effective manner** (…)*

(c) In assessing whether the respondent State complied with its positive obligations, the Court must consider whether, (…) the State remained within its margin of appreciation. In cases involving environmental issues, the State must be allowed a wide margin of appreciation (…).

(d) The choice of means is in principle a matter that falls within the State's margin of appreciation; even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means. (…)

*(e) **While it is not in the Court's remit to determine what exactly should have been done, it can assess whether the authorities approached the matter with due diligence** and gave consideration to all competing interests (…).*

(f) The State has a positive obligation to provide access to essential information enabling individuals to assess risks to their health and lives (…).

(g) In assessing whether the respondent State complied with its positive obligations, the Court must consider the particular circumstances of the case. The scope of the positive obligations imputable to the State in the particular circumstances will depend

on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation (...).

539. ***In environmental cases examined under Article 8 of the Convention, the Court has frequently reviewed the domestic decision-making process****, taking into account that the procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation (...). In this context, the Court has had particular regard to the following principles and considerations:*

(a) The complexity of the issues involved with regard to environmental policy-making renders the Court's role primarily a subsidiary one. The Court must therefore first examine ***whether the decision-making process was adequate*** *(...);*

(b) The Court is required to consider all the procedural aspects, including the type of policy or decision involved, ***the extent to which the views of individuals were taken into account throughout the decision-making procedure****, (...).*

(c) In particular, a governmental decision-making process concerning complex issues such as those in respect of environmental and economic policy must necessarily involve ***appropriate investigations and studies*** *in order to allow the authorities to strike a fair balance between the various conflicting interests at stake. (...).*

(d) The ***public must have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed*** *(...).*

(e) The individuals concerned must have an opportunity to protect their interests in the environmental decision-making process, which implies that ***they must be able to participate effectively in relevant proceedings and to have their relevant arguments examined****, although the actual design of the process is a matter falling within the State's margin of appreciation (...)*

540. It is ***with these principles in mind*** *that the Court will proceed by identifying the content of the State's positive obligations under Articles 2 and 8 of the Convention in the context of climate change (...) However, given the special nature of the phenomenon as compared with the isolated sources of environmental harm previously addressed in the Court's case-law,* ***the general parameters of the positive obligations must be adapted to the specific context of climate change.***

b) The States' positive obligations in the context of climate change

(1) The States' margin of appreciation

542. Having regard, in particular, to the scientific evidence as regards the manner in which climate change affects Convention rights, and taking into account the scientific evidence regarding the urgency of combating the adverse effects of climate change, the severity of its consequences, including the grave risk of their reaching the point of irreversibility, and the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights (...), ***the Court finds it justified to consider that climate protection should carry considerable weight in the weighing-up of any competing considerations****. Other factors militating in the same direction include the global nature of the effects of GHG emissions, as opposed to environmental harm that occurs solely within a State's own borders,* ***and the States' generally inadequate track record in taking action***

to address the risks of climate change *that have become apparent in the past several decades, as evidenced by the IPCC's finding of "a rapidly closing window of opportunity to secure a liveable and sustainable future for all" (see paragraph 118 above), circumstances which highlight the* ***gravity of the risks arising from non-compliance with the overall global objective*** *(see also paragraph 139 above).*

543. Taking as a starting-point the principle that States must enjoy a certain margin of appreciation in this area, the above considerations entail a distinction between the ***scope of the margin as regards, on the one hand, the State's commitment to the necessity of combating climate change and its adverse effects, and the setting of the requisite aims and objectives in this respect****, and, on the other hand, the* ***choice of means designed to achieve those objectives****. As regards the former aspect, the nature and gravity of the threat and the general consensus as to the stakes involved in* ***ensuring the overarching goal of effective climate protection through overall GHG reduction targets in accordance with the Contracting Parties' accepted commitments to achieve carbon neutrality****, call for a reduced margin of appreciation for the States. As regards the latter aspect, namely their choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources, the States should be accorded a wide margin of appreciation.*

(2) Content of the States' positive obligations in the climate change context

545. Accordingly, the State's obligation under Article 8 is ***to do its part to ensure such protection****. In this context, the* ***State's primary duty*** *is to* ***adopt****, and to* ***effectively apply in practice****, regulations and measures* ***capable of mitigating the existing and potentially irreversible, future effects of climate change****. (..).*

546. ***In line with the international commitments*** *undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC (...),* ***the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights****, notably the right to private and family life and home under Article 8 of the Convention.*

547. Bearing in mind that the positive obligations relating to the setting up of a regulatory framework must be geared to the specific features of the subject matter and the risks involved (...) and that the ***global aims*** *as to the need to limit the rise in global temperature,* ***as set out in the Paris Agreement****, must inform the formulation of domestic policies, it is obvious that* ***the said aims cannot of themselves suffice as a criterion for any assessment of Convention compliance*** *of individual Contracting Parties to the Convention in this area. This is because each individual State* ***is called upon to define its own adequate pathway for reaching carbon neutrality, depending on the sources and levels of emissions and all other relevant factors within its jurisdiction****.*

548. It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the ***substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in***

principle, the next three decades. *In this context, in order for the measures to be effective, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (...).*

549. Moreover, in order for this to be ***genuinely feasible****, and to* ***avoid a disproportionate burden on future generations****,* ***immediate action*** *needs to be taken and* ***adequate intermediate reduction goals must be set for the period leading to net neutrality****. Such measures should, in the first place, be incorporated into a* ***binding regulatory framework*** *at the national level, followed by* ***adequate implementation****. The relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures. Accordingly, and reiterating the position taken above, namely that the margin of appreciation to be afforded to States is reduced as regards the setting of the requisite aims and objectives, whereas in respect of the choice of means to pursue those aims and objectives it remains wide, the Court finds it appropriate to outline the States' positive obligations (...) in this domain as follows.*

550. When assessing whether a State has remained within its margin of appreciation (...), the Court will examine whether the competent domestic authorities, ***be it at the legislative, executive or judicial level****, have had due regard to the need to:*

(a) adopt general measures specifying a ***target timeline for achieving carbon neutrality*** *and the* ***overall remaining carbon budget for the same time frame****, or another equivalent method of quantification of future GHG emissions,* ***in line with the overarching goal for national and/or global climate-change mitigation commitments****;*

(b) set out ***intermediate GHG emissions reduction targets*** *and pathways (by sector or other relevant methodologies) that are deemed* ***capable, in principle, of meeting the overall national GHG reduction goals*** *within the relevant time frames undertaken in national policies;*

(c) provide ***evidence showing whether they have duly complied****, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);*

(d) keep the ***relevant GHG reduction targets updated with due diligence, and based on the best available evidence****; and*

(e) ***act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures****.*

551. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation (...).

552. Furthermore, effective protection (...) requires that the above-noted mitigation measures be ***supplemented by adaptation measures*** *aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection. Such adaptation measures must be put in place and effectively applied in accordance with the best available evidence (...) and consistent with the general structure of the State's positive obligations in this context (...).*

*553. Lastly, (…) the **procedural safeguards** available to those concerned will be especially material in determining whether the respondent State has remained within its margin of appreciation (…).*

*554. (…), the following types of procedural safeguards are to be taken into account as regards the State's decision-making process in the context of climate change: (a) The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change **must be made available to the public**, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed. (b) Procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.*

(3) Switzerland's failure to comply with its positive obligations

*558. At the outset, the Court notes that the currently existing 2011 CO2 Act (in force since 2013) required that by 2020 GHG emissions should be reduced overall **by 20%** compared with 1990 levels (…). However, as pointed out by the applicants, in an assessment dating back to August 2009, **the Swiss Federal Council found (…) that the industrialised countries (such as the respondent State) had to reduce their emissions by 25-40% by 2020 compared to 1990 levels**. (…).*

*559. Moreover, as the Government acknowledged, the relevant domestic assessments found that **even the GHG reduction target for 2020 had been missed**. Indeed, on average over the period between 2013 and 2020, Switzerland reduced its GHG emissions by around 11% compared with 1990 levels (see paragraph 87 above), which indicates the insufficiency of the authorities' past action to take the necessary measures to address climate change.*

*561. (…) In any event, and irrespective of the way in which the legislative process is organised from the domestic constitutional point of view (…), the fact is that after the referendum a legislative lacuna existed for the period after 2020. The State sought to address this lacuna by enacting, on 17 December 2021, a partial revision of the existing 2011 CO2 Act, according to which the reduction target for the years 2021 to 2024 was set at 1.5% per year compared with 1990 levels, on the understanding that from 2022 onwards, a maximum of 25% of this reduction could be achieved by measures implemented abroad (…). **This also left the period after 2024 unregulated and thus incompatible with the requirement of the existence of general measures specifying the respondent State's mitigation measures in line with a net neutrality timeline.***

*562. These lacunae point to a **failure** on the part of the respondent State to fulfil its positive obligation derived from Article 8 **to devise a regulatory framework setting the requisite objectives and goals** (see paragraph 550 (a)-(b) above). In this context, it should be noted that in its latest AR6 Synthesis Report (Climate Change 2023) the **IPCC stressed that the choices and actions implemented in this decade would have impacts now and for thousands of years** (…).*

564. On 30 September 2022, reflecting the commitments in the updated NDC, the Climate Act was enacted (…). This Act – which was confirmed in a referendum only on

18 June 2023 but has not yet come into force – envisages the principle of a net-zero emissions target by 2050 by providing that the GHG emissions should be reduced "as far as possible". It also provides for an intermediate target for 2040 (75% reduction compared with 1990 levels) and for the years 2031 to 2040 (average of at least 64%) and 2041 to 2050 (average of at least 89% compared with 1990 levels). It also set indicative values for the reduction of emissions in the building, transport and industrial sectors for the years 2040 and 2050. 565. In this connection, the Court notes that the ***Climate Act sets out the general objectives and targets but that the concrete measures to achieve those objectives are not set out in the Act*** *but rather remain to be determined by the Federal Council and proposed to Parliament "in good time" (section 11(1) of the Climate Act).* ***Moreover, the adoption of the concrete measures is to be provided under the 2011 CO2 Act (section 11(2) of the Climate Act), which, as already noted in paragraphs 558 to 559 above, in its current form cannot be considered as providing for a sufficient regulatory framework****.*

566. It should also be noted that the new regulation under the Climate Act concerns intermediate targets only for the period after 2031. Given the fact that the 2011 CO2 Act provides for legal regulation of the intermediate targets only up until 2024 (see paragraph 561 above), this means that the period between 2025 and 2030 still remains unregulated pending the enactment of new legislation.

567. In these circumstances, given the pressing urgency of climate change and the current absence of a satisfactory regulatory framework, ***the Court has difficulty accepting that the mere legislative commitment to adopt the concrete measures "in good time", as envisaged in the Climate Act, satisfies the State's duty to provide, and effectively apply in practice, effective protection*** *of individuals within its jurisdiction from the adverse effects of climate change on their life and health (see paragraph 555 above).*

568. While acknowledging the significant progress to be expected from the recently enacted Climate Act, once it has entered into force, the Court must conclude that the introduction of that new legislation is not sufficient to remedy the shortcomings identified in the legal framework applicable so far.

569. The Court further observes that the ***applicant association has provided an estimate of the remaining Swiss carbon budget under the current situation, also taking into account the targets and pathways introduced by the Climate Act*** *(see paragraph 323 above). Referring to the relevant IPCC assessment of the global carbon budget, and the data of the Swiss greenhouse gas inventory, the applicant association provided an estimate according to which, assuming the same per capita burden-sharing for emissions from 2020 onwards, Switzerland would have a remaining carbon budget of 0.44 GtCO2 for a 67% chance of meeting the 1.5°C limit (or 0.33 GtCO2 for an 83% chance). In a scenario with a 34% reduction in CO2 emissions by 2030 and 75% by 2040, Switzerland would have used the remaining budget by around 2034 (or 2030 for an 83% change).* ***Thus, under its current climate strategy, Switzerland allowed for more GHG emissions than even an "equal per capita emissions" quantification approach would entitle it to use****.*

570. The Court observes that the Government relied on the 2012 Policy Brief to justify the absence of any specific carbon budget for Switzerland. Citing the latter, the Government suggested that there was no established methodology to determine a country's carbon budget and acknowledged that Switzerland had not determined one. They argued that Swiss national climate policy could be considered as being similar in

approach to establishing a carbon budget and that it was based on relevant internal assessments prepared in 2020 and expressed in its NDCs (...). However, ***the Court is not convinced that an effective regulatory framework concerning climate change could be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations*** *(see paragraph 550 (a) above).*

571. In this regard ***the Court cannot but note that the IPCC has stressed the importance of carbon budgets and policies for net-zero emissions*** *(see paragraph 116 above),* ***which can hardly be compensated for by reliance on the State's NDCs under the Paris Agreement****, as the Government seemed to suggest. The* ***Court also finds convincing the reasoning of the GFCC, which rejected the argument that it was impossible to determine the national carbon budget, pointing to, inter alia, the principle of common but differentiated responsibilities under the UNFCCC and the Paris Agreement*** *(see Neubauer and Others, cited in paragraph 254 above, paragraphs 215-29).* ***This principle requires the States to act on the basis of equity and in accordance with their own respective capabilities****. Thus, for instance, it is instructive for comparative purposes that the European Climate Law provides for the establishment of indicative GHG budgets (see paragraph 211 above).*

572. In these circumstances, while acknowledging that the measures and methods determining the details of the State's climate policy fall within its wide margin of appreciation, ***in the absence of any domestic measure attempting to quantify the respondent State's remaining carbon budget, the Court has difficulty accepting that the State could be regarded as complying effectively with its regulatory obligation under Article 8 of the Convention*** *(see paragraph 550 above).*

9. Victim status and standing regarding the alleged violation of Art. 6 and 13 ECHR

590. In order to claim to be a "victim" in the context of an alleged violation of Article 6 of the Convention, and to complain of alleged procedural shortcomings under that provision, it is normally sufficient that the applicant was affected as a party to the proceedings brought by him or her before the domestic courts (...).

592. (...), the Government (...) did not challenge the victim status of applicants nos. 2-5 under the procedural provisions (Articles 6 and 13) (...).

593. Having regard to the fact that the issue of victim status under Article 34 is, in any event, a matter that goes to the Court's jurisdiction and which the Court examines of its own motion (...), the issue of the victim status of the applicants under Article 6 § 1 of the Convention will be examined by joining it to the assessment of the applicability of that provision.

594. Article 6 of the Convention does not guarantee a right of access to a court with power to invalidate or override a law enacted by the legislature (...).

10. Applicability of Art. 6 ECHR in the climate change context

608. The above-noted general principles concerning the applicability of Article 6 § 1 also prevail in the present climate-change context, it being understood that ***their application may need to take into account the specificities of climate-change litigation****. In other words, while characteristics of the subject matter do not at present prompt the Court to revise its firmly established case-law on Article 6, they will nonetheless inevitably have implications for the application of that case-law, both in*

regard to the conditions for its applicability and to the assessment of compliance with the requirements flowing from that provision.

609. (...) Article 6 cannot be relied upon to institute an action before a court for the purpose of compelling Parliament to enact legislation. However, where domestic law does provide for individual access to proceedings before a Constitutional Court or another similar superior court which does have the power to examine an appeal lodged directly against a law, Article 6 may be applicable (...)

610. (...) it is important to note that in so far as participation of the public and access to information in matters concerning the environment (as widely acknowledged in international environmental law) constitute rights recognised in domestic law, this may lead to a conclusion that there is a "civil" right within the meaning of Article 6. (...)

612. As regards, lastly, the requirement that the outcome of the proceedings in question must be "directly decisive" for the applicant's right, the Court notes that there is a ***certain link between the requirement*** *under Article 6 that the outcome of the proceedings must be directly decisive for the applicants' rights relied on under domestic law,* ***and the considerations it has found relevant with a view to setting out criteria for victim status as well as those relating to the applicability of Article 8*** *(...).*

613. Furthermore, the object of the proceedings also has a bearing on whether the outcome can be considered decisive for the right relied on. (...). In the context of climate litigation, however, the object of the proceedings may well be broader, which is why the question whether their object can be considered directly decisive for the rights relied on becomes more critical and distinct.

614. At the same time, the various elements of the analysis under this limb of the test, and in particular the notion of imminent harm or danger, cannot be applied without properly taking into account the specific nature of climate change-related risks, including their potential for irreversible consequences and corollary severity of harm. ***Where future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction****. Such an approach* ***would unduly limit access to a court for many of the most serious risks associated with climate change****. This is particularly true for legal actions instituted by associations. In the climate-change context, their legal actions must be seen in the light of their role as a means through which the Convention rights of those affected by climate change, including those at a distinct representational disadvantage, can be defended and through which they can seek to obtain an adequate corrective action for the alleged failures and omissions on the part of the authorities in the field of climate change.*

11. Applicability of Art. 6 ECHR in the present case

615. The Court notes that ***the applicants' action instituted at the domestic level largely concerned requests for legislative and regulatory action falling outside the scope of Article 6 § 1*** *(see points 1-3 and some items under point 4 of their claims in paragraph 22 above).* ***In part, however, the action concerned the implementation of measures within the competence of the respective authorities, required to achieve the current reduction target of 20%****, and thus for*

ending the unlawful omissions (see the opening part of point 4 in paragraph 22 above). ***They also requested a declaratory ruling of unlawfulness of the alleged governmental omissions in the field of climate change*** *(see point 5 of the request). (...)*

616. While the ***complaint concerning policy decisions that are subject to the relevant democratic processes is not a matter falling within the scope of Article 6*** *(see paragraph 594 above), the* ***applicants' complaint concerning effective implementation of the mitigation measures under existing law is a matter capable of falling within the scope of that provision****, provided that the other conditions for the applicability of Article 6 § 1 are satisfied.*

620. Lastly, as regards the third criterion – whether the outcome of the proceedings was "directly decisive" for the applicants' rights – the Court notes the following.

621. As regards the dispute brought by the applicant association, and in so far as that dispute arose out of a relevant part of its claim at the domestic level – namely, the complaint concerning the failure to effectively implement mitigation measures under the existing law (see paragraph 615 above) – the applicant association has demonstrated that it had an actual and sufficiently close connection to the matter complained of and to the individuals seeking protection against the adverse effects of climate change on their lives, health and quality of life. In other words, the applicant association sought to defend the specific civil rights of its members in relation to the adverse effects of climate change (see also paragraphs 521-526 above). It acted as a means through which the rights of those affected by climate change could be defended and through which they could seek to obtain an adequate corrective action for the State's failure to effectively implement mitigation measures under the existing law (see paragraph 614 above).

622. In this connection, the Court refers to its above findings regarding the applicant association's standing for the purposes of the complaint under Article 8 of the Convention (see paragraphs 521-526 above). It reiterates the important role of associations in defending specific causes in the sphere of environmental protection, as already found in its case-law (see paragraph 601 above), as well as the particular relevance of collective action in the context of climate change, the consequences of which are not specifically limited to certain individuals. ***Similarly, in so far as a dispute reflects this collective dimension, the requirement of a "directly decisive" outcome must be taken in the broader sense of seeking to obtain a form of correction of the authorities' actions and omissions affecting the civil rights of its members under national law.***

623. Article 6 § 1 therefore applies to the complaint of the applicant association and it can be considered to have victim status under that provision regarding its complaint of lack of access to a court (see paragraph 593 above). (...)

624. With respect to applicants nos. 2-5, it cannot be considered that the dispute they had brought concerning the failure to effectively implement mitigation measures under the existing law was or could have been directly decisive for their specific rights. For similar reasons as those stated above with respect to Article 8 of the Convention (see paragraphs 527-535 above), ***it cannot be held that applicants nos. 2-5 have made out a case demonstrating that the requested action by the authorities – namely, effectively implementing mitigation measures under the existing national law – alone would have created sufficiently imminent and certain***

***effects on their individual rights in the context of climate change**. It therefore follows that their dispute had a mere tenuous connection with, or remote consequences for, their rights relied upon under national law (...).*

12. Merits regarding Art. 6 ECHR

627. It should also be reiterated that Article 6 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the grounds of being incompatible with the Convention or to equivalent domestic legal norms (...). Furthermore, the Court has also accepted, albeit in another context, that maintaining the separation of powers between the legislature and the judiciary is a legitimate aim as regards limitations on the right of access to a court (...).

629. At the outset, the Court reiterates that the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (...).

*630. In the present case, the applicant association's legal action was rejected, (...) without the merits of its complaints being assessed (...). There was therefore a limitation on the right of access to a court and the Court must assess whether the manner in which the limitation at issue operated in the present case restricted the applicant association's access to a court in such a way or to such an extent that the **very essence of the right was impaired** (...).*

633. In this connection, it should be reiterated that the action which the applicant association instituted at the domestic level could be seen as being hybrid in nature. In its main part, it clearly concerned issues pertaining to the democratic legislative process and falling outside the scope of Article 6 § 1, but it also concerned issues pertaining specifically to alleged failures in the enforcement of the existing domestic law affecting the protection of the rights defended by the applicant association. Some of the claims thus raised issues going to the lawfulness of the impugned governmental actions or omissions, alleging adverse effects on the right to life and the protection of physical integrity, which are enshrined in the domestic law, notably in Article 10 of the Constitution (see paragraphs 615-617 above).

*634. **To the extent that it was seeking to vindicate these rights in the face of the threats posed by the allegedly inadequate and insufficient action by the authorities to implement the relevant measures for the mitigation of climate change already required under the existing national law, this kind of action cannot automatically be seen as an actio popularis or as involving a political issue which the courts should not engage with.** This position is consistent with the reasoning set out in paragraph 436 above as regards the manner in which climate change may affect human rights and the pressing need to address the threats posed by climate change.*

*635. **The Court is not persuaded by the domestic courts' findings that there was still some time to prevent global warming from reaching the critical limit** (see paragraphs 56-59 above). This was **not based on sufficient examination of the scientific evidence concerning climate change**, which was already available at the relevant time, as well as the general acceptance that there is urgency as regards the existing and inevitable future impacts of climate change on various aspects of human rights (see paragraph 436 above; see also paragraph 337 above as regards the respondent Government's acceptance that there was a climate emergency). Indeed,*

the existing evidence and the scientific findings on the urgency of addressing the adverse effects of climate change, including the grave risk of their inevitability and their irreversibility, suggest that there was a ***pressing need to ensure the legal protection of human rights as regards the authorities' allegedly inadequate action to tackle climate change.***

636. The Court further notes that the domestic courts did not address the issue of the standing of the applicant association, an issue which warranted a separate assessment irrespective of the domestic courts' position as regards the individual applicants' complaints. The domestic courts did not engage seriously or at all with the action brought by the applicant association.

637. What is more, before resorting to the courts the applicant association, and its members, had raised their complaints before various expert and specialised administrative bodies and agencies, but none of them dealt with the substance of their complaints (see paragraph 22 above). Despite the fact that such an examination by the administrative authorities alone could not satisfy the requirements of access to a court under Article 6, the Court notes that, judging by the DETEC's decision, the ***rejection of the applicants' complaint by the administrative authorities would seem to have been based on inadequate and insufficient considerations similar to those relied upon by the domestic courts*** *(see paragraphs 28-31 above). The Court notes, furthermore,* ***that individual applicants/members of the association were not given access to a court****, and* ***nor was there any other avenue*** *under domestic law through which they could bring their complaints to a court. (...).*

638. The foregoing considerations are sufficient to enable the Court to conclude that, to the extent that the applicant association's claims fell within the scope of Article 6 § 1, its right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired.

639. In this connection, the Court considers it essential to emphasise the ***key role which domestic courts have played and will play in climate-change litigation****, a fact reflected in the case-law adopted to date in certain Council of Europe member States,* ***highlighting the importance of access to justice in this field****. Furthermore, given the* ***principles of shared responsibility and subsidiarity, it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed****.*

640. In the present case, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

13. Considerations regarding Art. 13 ECHR

644. The Court notes that the role of Article 6 in relation to Article 13 is that of a lex specialis, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (...).

645. As regards applicants nos. 2-5, having regard to its findings in paragraphs 527 to 535 and 625 above, the Court finds that they have no arguable claim under Article 13 (...).

14. Considerations regarding Art. 46 ECHR

657. In the present case, ***having regard to the complexity and the nature of the issues involved, the Court is unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the present judgment****. Given the differentiated margin of appreciation accorded to the State in this area (…), the Court considers that the respondent State, with the assistance of the Committee of Ministers, is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of measures aimed at ensuring that the domestic authorities comply with Convention requirements, as clarified in the present judgment.*