

Müllner v. Austria

Application no. 18859/21

OBSERVATIONS ON THE LAW

Submitted on behalf of the Applicant

3 March 2025

Glossary

1.5°C-limit	Temperature goal of 1.5°C above pre-industrial levels enshrined in the Paris Agreement
AHG	<i>Amtshaftungsgesetz</i> (Austrian Public Liability Act)
App no(s)	Application number(s)
AR 6	IPCC Sixth Assessment Report
Art	Article
AS	Additional Submission
B-VG	<i>Bundes-Verfassungsgesetz</i> (Austrian Federal Constitution/Federal Constitutional Act)
BGBI	<i>Bundesgesetzblatt</i> (Federal Law Gazette)
BMK	<i>Bundesministerium/Bundesministerin für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie</i> (Ministry/Minister for Climate Protection, Environment, Energy, Mobility, Innovation and Technology)
C	celsius
CBDR-RC	Common But Differentiated Responsibilities and Respective Capabilities
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Collection of the most important judgments and rulings of the Constitutional Court
CO₂e	CO ₂ (carbon dioxide) equivalent
CRPD	Convention on the Rights of Persons with Disabilities
dec	decision
Doc/DOC	Document
e.g.	exempli gratia
ECHR	Convention on the Protection of Human Rights and Fundamental Freedoms

ECL	European Climate Law
ECtHR	European Court of Human Rights
ESABCC	European Scientific Advisory Board on Climate Change
et al.	and others
et seq	and the following
ETS	Emissions Trading System
EU	European Union
EUR	Euro
f	following
ff	and the following
Fn	footnote
GC	Grand Chamber
GHG	greenhouse gas
GRC	<i>Charta der Grundrechte der Europäischen Union</i> (Charter of Fundamental Rights of the European Union)
Gt	Gigatonnes
GWL(s)	Global Warming Level(s)
GWL1.5	global warming level of 1.5°C above pre-industrial levels
GWL2.0	global warming level of 2°C above pre-industrial levels
GWL3.0	global warming level of 3°C above pre-industrial levels
i.e.	id est
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
KlimaSeniorinnen	<i>Verein KlimaSeniorinnen Schweiz and Others v Switzerland</i> [GC] App no 53600/20 (ECtHR, 9 April 2024)
KSG	<i>Klimaschutzgesetz</i> (Austrian Climate Protection Act)

LULUCF	land use, land-use change, and forestry
MinStG	<i>Mineralölsteuergesetz</i> 1995 (Mineral Oil Tax Act)
MS	Multiple Sclerosis
Mt	megatonnes
NDC(s)	Nationally Determined Contribution(s)
NECP	National Energy and Climate Plan
no(s)	Number(s)
OF	Observations on the Facts
p	page
P95	Values for the 95th percentile (corresponding to extreme years of the respective global warming level)
para(s)	paragraph(s)
t	ton(s)
TFEU	Treaty on the Functioning of the EU
UNCLOS	United Nations Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UstG	<i>Umsatzsteuergesetz</i> 1994 (Value Added Tax Act)
v	versus
VAT	Value Added Tax
VfGH	<i>Verfassungsgerichtshof</i> (Constitutional Court)
VfSlg	<i>Sammlung der Erkenntnisse und wichtigsten Beschlüsse des Verfassungsgerichtshofes</i> (Collection of the most important judgments and rulings of the Constitutional Court)
vol	volume
WAM	with additional measures
WEM	with existing measures

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I. Exhaustion of domestic remedies pursuant to Art 35

1. Is the application admissible? In particular:

a. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention in respect of each of his complaints lodged with the Court under Articles 6, 8 and 13 of the Convention (see *Duarte Agostinho and Others v. Portugal and Others* (dec.) [GC], no. 39371/20, § 215, 9 April 2024, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-145, 27 November 2023)?

1. In this section, the Applicant will demonstrate that he has fully exhausted the required domestic remedies available to him in respect of each of the claims raised under Article 6, Article 8 and Article 13 ECHR (“**Art 6**”, “**Art 8**” and “**Art 13**”).
2. As explained in his Observations on the Facts (“**OF**”, Section I), the Applicant filed an individual application with the Constitutional Court on 20 February 2020, complaining *inter alia* of the violation of his Convention rights under Art 2 and 8 due to the failures of existing legislation to protect his rights under these provisions.
3. In his application, the Applicant explained that the alleged violations of his rights under Art 8 are two-fold. They result first from (i) an **action** (namely through, § 6 (1)(3)(d) of the Austrian Value Added Tax Act (“*Umsatzsteuergesetz 1994*” - “**UStG**”) and § 4 (1)(1) of the Mineral Oil Tax Act (“*Mineralölsteuergesetz 1995*”⁷ - “**MinStG**”) including all interrelated norms) and second from (ii) an **omission**, namely the absence in the Respondent’s legal system of an adequate climate framework capable of effectively protecting his rights under Art 8 (Additional Submission (“**AS**”), paras 51-56). The Applicant argued in substance that his right to protection under Art 8 was infringed as a result of both these failures by the

Respondent. His claim under Art 8 therefore rests on two different limbs.

4. Contrary to the applicants in *KlimaSeniorinnen*,¹ the Applicant had no remedy to challenge insufficient climate action on the basis of the Austrian Climate Protection Act (“*Klimaschutzgesetz*”, hereinafter “**KSG**”). The fact that the KSG precludes such possibility is at the heart of the infringement of the Applicant’s rights under Art 13.² As has been confirmed by case-law, the KSG can also not successfully be challenged by an individual (see para 27 *et seq* below).
5. The Applicant’s only remaining remedy was to file an individual application with the Constitutional Court to challenge the constitutionality of two climate-harmful measures. The Applicant’s case is thus not “*completely different*” to *KlimaSeniorinnen* as suggested by the Respondent,³ but rather contains additional facets under Art 8, and under Art 13 taken in conjunction with Art 8.
6. This section will proceed to demonstrate:
 - (i) First, that the Applicant has duly exhausted the available domestic remedies regarding his claims under Art 8, 6 and 13 (**Section 1**).

¹ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [GC] App no 53600/20 (ECtHR, 9 April 2024).

² Fuchs et al., “Studie “Klimaklagen“ in Österreich Rahmenbedingungen und Grenzen des Zugangs zum Verfassungsgerichtshof (2025, commissioned by the BMK), 35 [“Study “Climate Lawsuits” in Austria: Framework and Limits of Access to the Constitutional Court”] <https://www.bmk.gv.at/dam/jcr:8581707c-bf0a-4ec6-b19e-0f627bf8601c/Studie_Klimaklagen-in-Oesterreich_20250224_final.pdf> accessed 28 February 2025: „*Deutlich wird insofern nicht nur die besondere Schwierigkeit, im bestehenden Gesetzesrecht einen „Anker“ für die Geltendmachung verfassungswidrigen gesetzgeberischen Unterlassens auszumachen; ersichtlich wird damit auch der Umstand, dass im Besonderen gegen das KSG seiner spezifischen Konstruktion ein erfolgreiches Vorgehen mittels Individualantrags nach derzeitigem Stand kaum möglich sein dürfte.*“ [“What is clear from this is not only the particular difficulty of identifying an ‘anchor’ in existing legislation for asserting unconstitutional legislative omission; it also makes it apparent that, as things stand, it is highly unlikely that a successful action based on an individual application will be possible against the KSG, given its specific structure.”]

³ Respondent Observations III 2.1.

- (ii) Second, that the Applicant has no effective remedy available to challenge the Respondent's failure to adopt an overall climate mitigation framework under Art 8, thereby infringing his rights under Art 13 (**Section 2**).
- (iii) Third, that the Respondent claimed non-exhaustion of domestic remedies but failed to prove the existence of an effective remedy capable of providing adequate redress to the Applicant (**Section 3**).

1. The Applicant has duly exhausted all domestic remedies with regards to his claims under Art 8, 6 and 13

7. At the outset, the Applicant wishes to stress that his case is to be distinguished from *Duarte Agostinho and Others v. Portugal and Others (dec.)* [GC],⁴ in which the applicants did not attempt to exhaust domestic remedies at all. In the present case, the Applicant, to the contrary, “*did everything that could reasonably be expected of [him] to exhaust domestic remedies.*”⁵
8. In this section, the Applicant will demonstrate that he made “*normal use of remedies which [were] available*”⁶ to him and enabled the domestic courts “*to deal with the substance of an ‘arguable complaint’*”,⁷ which “*had been sufficiently raised*”⁸ with respect to each of his claims.
9. Turning to the assessment of the effectiveness of the remedy available to him, the

⁴ *Duarte Agostinho and Others v Portugal and 32 others* [GC] App no 39371/20 (ECtHR, 9 April 2024).

⁵ *Elçi and Others v Turkey* App nos 23145/93 and 25091/94 (ECtHR, 24 March 2004), paras 605 ff, with further references.

⁶ *Communauté genevoise d’action syndicale (CGAS) v Switzerland* [GC] App no 21881/20 (ECtHR, 27 November 2023), para 139.

⁷ *McFarlane v Ireland* [GC] App no 31333/06 (ECtHR, 10 September 2010), para 108; *Kudła v Poland* [GC] App no 30210/96 (ECtHR 26 October 2000), para 157.

⁸ *Magyar Kétfarkú Kutya Párt v. Hungary* [GC] App no 201/17 (ECtHR, 20 January 2020), para 53 and the references cited therein.

Applicant is in full agreement with the Respondent that a constitutional challenge (“*Individualantrag*”, hereinafter his “**Individual Application**”) under Art 139/140 B-VG is the only available remedy he could resort to seek to enforce his right to protection against the adverse effects of climate change under Art 8.⁹ The Respondent’s suggestion that the Applicant should pursue an individual application (being an extraordinary remedy) demonstrates that no ordinary remedy remains available to the Applicant.¹⁰

10. The Applicant is also in agreement with the Respondent that the KSG cannot be successfully challenged by individuals before the Constitutional Court,¹¹ nor can its lack of ambition and the protection gap resulting therefrom be addressed through an individual application to “*enforce the substance of the Convention rights*”¹² (see para 38).
11. Before filing his Application to this Court, the Applicant thus fully satisfied the admissibility requirement as set out under Art 35. As can be seen from the text of his Individual Application,¹³ he clearly set out that the violations of his rights under Art 8 are two-fold (see para 3).¹⁴ In his Individual Application, he made abundantly clear that:

“In view of these influences, the state is obliged to take protective measures under Art 8 ECHR and Art 7 GRC. In practice, the Austrian government is not only failing to

⁹ Respondent Observations II. 4.1.1.

¹⁰ Respondent Observations III. 3.1.2.

¹¹ VfGH 27.06.2023, G 139/2021-11, para 17: „Das Klimaschutzgesetz verpflichte somit staatliche Organe zu bestimmten Handlungen; es begründe hingegen keine Rechte und Pflichten von Einzelpersonen. Damit sei es von vornherein ausgeschlossen, dass das Klimaschutzgesetz - und somit auch dessen § 3 - den Antragsteller in seiner Rechtssphäre berühre.“ [“The KSG therefore obliges state bodies to take certain actions; however, it does not create any rights or obligations for individuals. It is therefore ruled out from the outset that the KSG- and therefore also § 3 thereof - affects the applicant's legal sphere.”]

¹² Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 36.

¹³ Doc 20 resubmitted in English as Doc 20b.

¹⁴ Individual Application (Doc 20 & 20b), section 6.2.4 (p 68-73), section 8.7.1, (p 106-121); section 9 (p 122 ff).

*take protective measures, but on the contrary is even implementing damaging measures, such as the tax privileges for airplane transport that are the subject of this complaint.”*¹⁵

12. The Applicant also expressly acknowledged that he could not get full and appropriate relief using this remedy:

*“It is also true that the applicants’ fundamental rights under Art 2 and 8 ECHR are also violated by the legislator’s failure to take adequate measures to combat the climate crisis. In this regard, it is first briefly noted that in Austria (unlike in other EU states such as the Netherlands and Germany) applicants have no procedural means of legally asserting a violation of fundamental rights through the mere inaction of the legislature in connection with the climate crisis. The applicants are therefore procedurally dependent on demonstrating the violation of their rights exclusively on the basis of individual legal norms, such as the provisions listed below, which violate their fundamental rights. [...] The applicants must be given the opportunity to submit an effective complaint in view of the scientifically attested effects of the climate crisis and its impact on fundamental rights.”*¹⁶

13. The individual application procedure is subject to exceptionally restrictive standing requirements for individuals to review the compatibility of legislation with the Austrian Constitution and the ECHR.¹⁷ The procedure is explained in detail in the OF (Section III, 1.2.). These conditions only allow for judicial review of existing legislation¹⁸ and standing is only granted if the applicant is the person who is legally

¹⁵ Individual Application (Doc 20 & 20b), 113: „Der Staat ist angesichts dieser Einflüsse zur Ergreifung von Schutzmaßnahmen gem Art 8 EMRK und Art 7 GRC verpflichtet. Konkret unterlässt es die österreichische Regierung nicht nur Schutzmaßnahmen zu ergreifen, sondern setzt im Gegenteil sogar schädigende Maßnahmen, wie die gegenständlich bekämpften, steuerlichen Begünstigungen des Flugverkehrs.”

¹⁶ Ibid, section 9, p 124

¹⁷ CGAS (n 6), para 140 with further references; see for Austria BMK, ‘Study Climate Lawsuits’ (n 2), 20 ff.

¹⁸ See, e.g., Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 35.

addressed by the norm under challenge.¹⁹

14. The Applicant did all that can be expected of him by filing an application with respect to two pieces of existing legislation (the Kerosene tax privilege and VAT-tax privilege for international flights - measures that foster the increase of fossil fuels consumption, which are the primary source of GHG emissions according to the IPCC²⁰ (see also OF, section II, 2.6) - while duly adhering to these narrowly defined standing requirements.²¹ He thus made “*normal use of remedies which [were] available*”²² to him and gave the Constitutional Court the opportunity to address for the first time an Art 8 claim in the context of climate change. This constitutional challenge granted the domestic courts the opportunity to “*determine the issue of compatibility of the impugned national measures, or omissions, with the Convention*”,²³ and “*to address, at least in substance, the argument of a violation of a given Convention right*”²⁴ (emphasis added).

15. Indeed, the Individual Application clearly set out the Applicant’s claims with respect to the failure of the authorities to fulfil their positive obligations to adequately mitigate the adverse effects of climate change and to repeal norms, such as § 6 (1)(3)(d) **UStG** and § 4 (1)(1) **MinStG**.²⁵ He expressly substantiate why these

¹⁹ See, e.g., Madner, ‘Climate Change as a A perspective from Austria’ (2023) 42(10-12) HRLJ, 355.

²⁰ IPCC, ‘Synthesis Report - Summary for Policymakers’ (AR 6), 4 <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf> accessed 28 February 2025. Kletzan-Slamanig et al., ‘Analysis of Climate Counterproductive Subsidies in Austria/Analyse klimakontraproduktiver Subventionen in Österreich’ (2022), sec 3.2. and 3.3 <<https://www.wifo.ac.at/publication/pid/19011561>> accessed 28 February 2025.

²¹ CGAS (n 6), para 140 with further references; Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 20 ff.; Schulev-Steindl, ‘Klimaklagen: Ein Trend erreicht Österreich’ (2021) ecolex 17, 18: “*Zum andern scheitern sie vielfach bereits an zu engen Zugangsvoraussetzungen zum Rechtsschutz bzw mangelnder Bereitschaft der Gerichte, diese judikativ zu erweitern.*“ [„On the other hand, they often fail because the requirements for access to legal protection are too restrictive or because the courts are unwilling to expand them through case law.“]

²² CGAS (n 6), para 139.

²³ Duarte (n 4), para 226.

²⁴ Ibid, 75.

²⁵ Including intrinsically related norms.

two failures, when taken together, amount to a violation of his rights under Art 8. He demonstrated the applicability of the doctrine of “*indirect legal addressee*” (“*indirekte Normadressaten*”) (OF, section III, 1.2) which the Constitutional Court developed to address fundamental rights infringements more effectively.²⁶

16. The Constitutional Court dismissed the applicant’s challenge, ruling that despite the tax provisions being consumption taxes that businesses typically pass on to consumers, the applicant lacked standing as an indirect legal addressee. The reason why the indirect addressee doctrine did not apply in his case, the Court found, was because the Applicant did not himself use air travel.
17. In reaching this conclusion, the Constitutional Court misconstrued the Applicant’s claim as a purely economic one, which informed its approach to the question of the Applicant’s standing. It thus refrained from engaging with the substance of the Applicant’s fundamental right to protection guaranteed under Art 8 in the context of climate change.²⁷ As a result, the Constitutional Court’s assessment on standing was excessively formalistic,²⁸ which in turn gave rise to infringement of the Applicant’s right under Art 6 (1) (see below paras **Error! Reference source not found.** *et seq*). Indeed, given that the Constitutional Court is a last instance court,²⁹ the Applicant had no further domestic remedy (or court) available to raise his Art 6 claim (with).
18. With regard to his claim under Art 13, the Respondent contends that the Applicant did not raise it before the Constitutional Court and therefore did not comply with Art 35 in this regard.³⁰ This is incorrect: the Applicant expressly raised in the text

²⁶ Madner, ‘Climate Change as a Challenge’ (n 19), 355.

²⁷ See VfGH 20 September 2020, G 144-145/2020-13, V 332/2020-13 (Doc 21 & 21b in the Annex), paras 53 ff.

²⁸ See Schulev-Steindl, ‘Klimaklagen’ (n 21), 18.

²⁹ See Berka, *Verfassungsrecht* (8th ed, 2021), para 850a; Ziehensack, ‘§ 2 AHG’, in: Ziehensack (ed), *AHG Amshaftungsgesetz* (2nd ed., 2022), para 274; see also the Constitutional Courts’s website <<https://www.vfgh.gv.at/service/faq.en.html>> accessed 28 February 2025.

³⁰ Respondent Observations III, 3.1.3.

of his Individual Application his right to have access to an effective remedy under Art 13, and the absence thereof.³¹ The Constitutional Court lacks authority to directly enforce the State's obligations under Art 13. Individuals currently have no remedy available under the KSG or elsewhere to challenge insufficient climate ambition³² (see below paras 24-30).

19. To conclude, the Applicant has fully complied with his obligation to exhaust all available remedies.

2. The Applicant has no effective remedy to address the Respondent's omission to adopt an adequate climate mitigation framework

20. It is this Court's consistent case law that "[t]he rule of exhaustion of domestic remedies is based on the assumption - reflected in Article 13 of the Convention, with which it has close affinity - that there is an effective remedy available in respect of the alleged violation."³³ For the purposes of Art 13, Contracting States must ensure the availability of a domestic remedy before a "competent national authority",³⁴ affording the possibility of dealing with the substance of an "arguable complaint" under the Convention³⁵ and capable of granting "appropriate relief."³⁶ Such a remedy must enable an applicant to enforce the substance of his Convention right in whatever form they might happen to be secured in the domestic legal order.³⁷

³¹ Applicant's Individual Application (Doc 20 & 20b), 123 ff.

³² Fuchs et al., 'BMK Study Climate Lawsuits' (n 2), 24.

³³ *Duarte*, (n 4), para 215.

³⁴ *M.S.S. v Belgium and Greece* App no 30696/09 (ECHR, 21 January 2011), para 291.

³⁵ *Ibid*, para 288; *De Souza Ribeiro v. France* [GC] App no 22689/07 (ECtHR, 13 December 2012), para 78; *Centre for Legal Resources on behalf of Valentin Câmpăanu v. Romania* [GC] App no 47848/08 (ECtHR, 17 July 2014), para 148.

³⁶ *Vilvarajah and Others v the United Kingdom* App nos 13163/87; 13164/87; 13165/87; 13447/87; 13448/87 (ECtHR, 30 October 1991), para 122.

³⁷ *Rotaru v Romania* [GC] App no 28341/95 (ECtHR, 4 May 2000), para 67.

21. The Applicant's right to be protected through an adequate regulatory framework is clearly an arguable claim under Art 8. As demonstrated (see paras 62-92; AS, paras 1-8), the Applicant suffers from the Uhthoff Syndrome, which is uncontested by the Respondent.³⁸ The arguability of his claim results from the fact the Applicant experiences "*a high intensity of exposure to the adverse effects of climate change*" and has a "*pressing need for protection*"³⁹ from the adverse consequences of climate change (see Section II below).
22. To "*adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change*"⁴⁰ (emphasis added) is the only remedy capable of addressing his pressing need for protection and preventing future harm. Yet, he has no domestic remedy "*capable of directly redressing the impugned state of affairs.*"⁴¹ The absence of such remedy creates a procedural "*critical lacuna*",⁴² as all other available remedies in the Austrian legal system are "*obviously futile*".⁴³ This means that the Applicant is left with no possibility to challenge the Respondent's omission.⁴⁴
23. Significantly, this lacuna has been confirmed by a recent expert opinion commissioned by the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology ("**BMK**") ("*Study 'Climate Lawsuits' in Austria: Framework and Limits of Access to the Constitutional Court*") assessing

³⁸ Respondent Observations III. 3.2.4.

³⁹ *KlimaSeniorinnen* (n 1), para 487.

⁴⁰ *Ibid*, para 545.

⁴¹ *CGAS* (n 6), para 139. See also *Balogh v Hungary* App no 47940/99 (ECtHR, 20 July 2004), para 30; *Sejdovic v Italy* [GC] App no 56581/00 (ECtHR, 1 March 2006), para 46; *Vučković and Others* [GC] App nos 17153/11, 17157/11 ea (ECtHR 25 March 2014), para 74; and *Gherghina v Romania* [GC] App no 42219/07 (9 July 2015), para 85; see also; *Paksas v Lithuania* [GC] App no 34932/04 (ECtHR, 6 January 2011), para 75; see also the Court's subsidiary consideration in *S.A.S. v France* [GC] App no 43835/11 (ECtHR, 1 July 2014), para 6.

⁴² *KlimaSeniorinnen* (n 1), para 573, see also para 562. See also, Fuchs et al., 'BMK Study Climate Lawsuits' (n 2), 32 ff.

⁴³ *Vučković and Others* (n 41), paras 73-74 and *Sejdovic* (n 41), para 45.

⁴⁴ There is also no other civil, criminal or administrative remedy available to bring a similar claim.

the impacts of the *KlimaSeniorinnen* judgment for Austria. This report concluded:

“For affected individuals, [...] it remains the case that there are still hardly any possibilities to obtain legal protection against delayed climate protection legislation. Irrespective of the question of the scope of application of Art 6 ECHR dealt with by the ECtHR, doubts therefore remain as to the conformity of the current legal situation with Art 13 ECHR insofar as, on the one hand, an interference with fundamental rights (specifically e.g. pursuant to Art 8 ECHR) can be affirmed in principle, but, on the other hand, an effective legal remedy may be lacking.”⁴⁵

2.1. The KSG does not provide a legal basis to challenge the Respondent’s omission

24. The Respondent’s climate ambitions are currently enshrined in the KSG. Its purpose is to lay out its overall climate framework. As such, it is the most relevant administrative norm in the Applicant’s case. Its insufficiency and lack of procedural avenues also lie at the heart of the Applicant’s claim under Art 13.
25. The KSG is structured as a procedural law, focused on outlining negotiation frameworks between governmental actors. It therefore does not set any binding

⁴⁵ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 42: “Für betroffene Einzelpersonen bleibt es jedoch [...] generell dabei, dass kaum Möglichkeiten offenstehen, um Rechtsschutz gegen eine säumige Klimaschutzgesetzgebung zu erlangen. Unabhängig von der durch den EGMR behandelten Frage des Anwendungsbereichs von Art 6 EMRK bleiben daher Zweifel an der Konformität der gegenwärtigen Rechtslage mit Art 13 EMRK insofern bestehen, als zur einen Seite zwar ein Grundrechtseingriff (konkret zB gemäß Art 8 EMRK) grundsätzlich bejaht werden kann, zur anderen Seite aber ein wirksamer Rechtsbehelf möglicherweise fehlt.” but also page 21: “In the light of this, a (too) narrow access to justice is criticized in academia, and it is particularly pointed out that the high barriers to access to judicial review by the Constitutional Court, which are all the more apparent in the context of inadequate climate protection legislation, come into conflict with the right to an effective remedy under Art. 13 ECHR.” [“In der Lehre wird im Lichte dessen ein (zu) enger access to justice moniert sowie insbesondere zu bedenken gegeben, dass die hohen Zugangshürden zur Gesetzesprüfung durch den VfGH, die im Kontext unzureichender Klimaschutzgesetzgebung umso deutlicher hervortreten, in eine Spannungslage mit dem Recht auf wirksame Beschwerde gemäß Art 13 EMRK geraten.”]

obligations to deliver substantive climate protection.⁴⁶ Given the original intention of the legislator to implement a new climate act after 2020,⁴⁷ the KSG contains climate targets only for the period up until 2020. The KSG does not provide for any mechanism or obligation to renew climate targets, nor does it include the possibility to file a request to this end.⁴⁸

26. Therefore, no provision grants individuals⁴⁹ a cause of action to demand new or updated climate targets, a carbon budget, or effective climate action to be adopted, nor does it allow to challenge inadequate targets in a public law claim, including an appeal against a decision of a lower instance administrative court to the Constitutional Court (“*Erkenntnisbeschwerde*”).⁵⁰ In other words, while the KSG is still in force, it is effectively outdated, and its shortcomings cannot be legally challenged.⁵¹

27. The KSG’s gaps can also not be remedied by an extraordinary legal review process.⁵² The KSG does not confer rights upon individuals and is therefore not -

⁴⁶ See Ennöckl, ‘Klimaklagen - Strukturen gerichtlicher Kontrolle im Klimaschutzrecht (Teil 2)’, (2022) 81 RdU 184, 188.

⁴⁷ KSG was originally implemented with the Kyoto Protocol in mind.

⁴⁸ Ennöckl, ‘Klimaschutzgesetz’, in: Ennöckl, *Klimaschutzrecht* (2023), 106. Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 13 f: “*In particular, the Climate Protection Act (KSG) - as an obvious subject of ‘climate lawsuits’ - does not establish any official powers and does not form a suitable legal basis for issuing administrative decisions. [...] This means that the “gateway” of the procedure under Article 144 of the Federal Constitutional Court Act for the possible initiation of an official legal review procedure by the Constitutional Court is closed to them.*” [“*Im Besonderen legt etwa das Klimaschutzgesetz (KSG) 61 - als in der Sache unmittelbar nabeliegender Gegenstand von „Klimaklagen“ 62 - keine behördlichen Befugnisse fest und ermächtigt insbesondere nicht zur Erlassung verwaltungsbehördlicher Bescheide. (...) Für (sie) hat dies zur Konsequenz, dass ihnen zugleich die „Schleuse“ des Verfahrens gemäß Art 144 B-VG hin zur möglichen Einleitung eines amtswegigen Gesetzesprüfungsverfahrens durch den VfGH verschlossen bleibt.*”]

⁴⁹ Or associations, Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 13 f.

⁵⁰ Ibid.

⁵¹ Kirchmair/Krempelmeier, ‘Das Klimaschutzprinzip im BVG Nachhaltigkeit: Ein schlafender Riese’ (2023) JRP 74, 75 f.

⁵² Thereto, scholars have attested the need for a reform of the KSG, Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 45: “*Um Rechtsschutzdefizite aufzufangen, die sich allenfalls im Kontext gesetzgeberischer (bzw*

even indirectly - addressed to them.⁵³ Thus the Applicant would be “*bound to fail*”⁵⁴ if he were to claim having standing to file a review of the KSG’s “*compatibility*”⁵⁵ with the Constitution. This constitutes “*objective obstacles to [this remedy’s] use*”.⁵⁶ As the Respondent itself stated in a different proceeding, the KSG “*does not create any rights or obligations for individuals. It is therefore ruled out from the outset that the KSG - and*

verordnungsseitiger) Untätigkeit eröffnen, wird insbesondere in Erwägung gezogen, eine gesetzliche Grundlage (etwa im KSG selbst) dafür zu schaffen, sodass unmittelbar betroffene Einzelne wie auch Umweltorganisationen im Fall der Säumnis bei Setzung gebotener Maßnahmen beim zuständigen Bundesministerium einen Antrag auf Erlassung derartiger Maßnahmen stellen können.” [“*In order to compensate for any legal protection deficits that may arise in the context of legislative (or regulatory) inaction, the creation of a legal basis (e.g. in the KSG itself) is being considered, so that individuals and environmental organizations directly affected can file an application with the competent federal ministry for the enactment of such measures in the event of a failure on the part of the government to take the necessary measures.*”]

⁵³ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 20 f. “*However, if the provision - as in the case of the KSG - is directed at the state bodies themselves and places them under legal obligation, or if it is directed at companies that benefit (or do not benefit) from favors that are partly harmful to the climate, it would appear, on the basis of the Constitutional Court’s previous case law on the strict admissibility requirements of individual applications as almost impossible to demonstrate direct legal involvement. [...] In the light of this, a (too) narrow access to justice is criticized in academia, and it is particularly pointed out that the high barriers to access to judicial review by the Constitutional Court, which are all the more apparent in the context of inadequate climate protection legislation, come into conflict with the right to an effective remedy under Art. 13 ECHR.*” [“*Richtet sich die Vorschrift aber - wie im Fall des KSG - an die Staatsorgane selbst und nimmt diese rechtlich in die Pflicht, oder sind gesetzliche Bestimmungen etwa an Unternehmen gerichtet, die von teils klimaschädlichen Begünstigungen profitieren (oder eben nicht), so erscheint es auf dem Boden der bisherigen Rechtsprechung des VfGH zu den strengen Zulässigkeitsvoraussetzungen von Individualanträgen für Einzelne als nahezu unmöglich, eine unmittelbare rechtliche Betroffenheit darzutun. [...] In der Lehre wird im Lichte dessen ein (zu) enger access to justice moniert sowie insbesondere zu bedenken gegeben, dass die hohen Zugangshürden zur Gesetzesprüfung durch den VfGH, die im Kontext unzureichender Klimaschutzgesetzgebung umso deutlicher hervortreten, in eine Spannungslage mit dem Recht auf wirksame Beschwerde gemäß Art 13 EMRK geraten.*”]

⁵⁴ *Sejdovic* (n 41), para 55 cited in *CGAS* (n 6), para 141.

⁵⁵ *CGAS* (n 6), para 150 where the situation was different.

⁵⁶ *Sejdovic* (n 41), para 55; Ennöckl (n 46), 188: “*As a result of these requirements, the Austrian Climate Protection Act (ö KSG) - which in itself would be the most obvious subject of an action for annulment in a climate lawsuit - cannot be challenged before the Constitutional Court.*” [„*Als Folge dieser Voraussetzungen kann etwa das österr Klimaschutzgesetz (ö KSG) - das an sich der nabeliegendste Anfechtungsgegenstand einer Klimaklage wäre - nicht beim VfGH bekämpft werden.*”]

*therefore also § 3 thereof - affects the applicant's legal sphere.*⁵⁷

28. Furthermore, it is not possible to alter the meaning of the KSG by repealing certain provisions through judicial review, such as to generate obligations which were not initially intended. It has nevertheless been attempted but rejected by the Constitutional Court. It held that doing so would alter the meaning the legislator intended the KSG to have and therefore a repeal would interfere with the legislator's intention.⁵⁸
29. Lastly, in contrast to other jurisdictions where climate cases like *Neubauer*⁵⁹ succeeded under KSG-equivalent legislation, the Austrian Constitutional Court maintains a stricter approach to standing requirements. Unlike these jurisdictions, it does not recognize mere infringement of fundamental rights as sufficient grounds for judicial review. Instead, the Court requires applicants to establish both a violation of fundamental rights and a direct legal connection to the contested norm.⁶⁰ In this regard, it is worth noting that the Respondent did not refer to the KSG as providing an effective remedy for the purpose of the second limb of the Applicant's Art 8 claim.
30. **For all these reasons, an individual application before the Constitutional Court challenging (the gaps contained in) the KSG is not an effective remedy for the Applicant.**⁶¹

⁵⁷ VfGH 27.06.2023, G 139/2021-11, para 17. „Das Klimaschutzgesetz verpflichte somit staatliche Organe zu bestimmten Handlungen; es begründe hingegen keine Rechte und Pflichten von Einzelpersonen. Damit sei es von vornherein ausgeschlossen, dass das Klimaschutzgesetz - und somit auch dessen § 3 - den Antragsteller in seiner Rechtssphäre berühre.“

⁵⁸ VfGH 27.06.2023 G 123/2023, paras 52 f; Ennöckl, 'Climate Change Litigation in Austria and Germany - Recent Developments' (2020) CCLR 306, 31; Rohregger/Pechhacker, 'Art 140 B-VG', in Korinek/Holoubek et al (eds), *Österreichisches Bundesverfassungsrecht* (19. Lfg 2024), paras 14, 40.

⁵⁹ *Neubauer v Germany* (24 March 2021) 1 BvR 2656/18.

⁶⁰ Ibid, para 108-110.

⁶¹ *CGAS* (n 6), para 139. *Duarte* (n 4), para 215. See also *Balogh* (n 41), para 30; *Sejdovic* (n 41), para 46;

2.2. The remaining remedies available in the Respondent's legal system are inadequate and ineffective

31. In the following paragraphs, the Applicant will demonstrate that no other remedy is available to adjudicate his Art 8 claim in the Austrian legal system.
32. First, there is no other administrative route available to the Applicant through which he could challenge the Respondent's failure to adopt an adequate climate framework. This is also uncontested by the Respondent, which only refers to the individual application procedure as a potentially available remedy.⁶² The Applicant can also not pursue a claim against the Respondent, based on the Public Liability Act ("*Amtshaftungsgesetz*")⁶³ as no relevant administrative act (including the KSG) has been infringed by the executive branch or national authorities in general.⁶⁴
33. Second, the Austrian legal system does not establish a general duty of care or a default complaint mechanism to hold the executive or legislative branches accountable for omissions that result in human rights infringements or insufficient

Vučković and Others (n 41), para 74; and *Gherghina* (n 41), para 85; *Paksas* (n 41), para 75; see also the Court's subsidiary consideration in *S.A.S.* (n 41), para 6; *Akdivar and Others v Turkey* [GC] App no 21893/93 (ECtHR, 16 September 1996), para 66 cited also in *Duarte* (n 4), para 215. See also *Molla Sali v Greece* [GC] App no 20452/14 (ECtHR, 19 December 2018), para 89; *Mocanu and Others v Romania* [GC] App nos 10865/09 and 2 others (ECtHR, 17 September 2014), para 225; *Dalia v France* App no 26102/95 (ECtHR, 19 February 1998), para 38; *McFarlane* (n 7), para 107; *Vučković and Others* (n 41), para 77.

⁶² Respondent Observations, III. 3.1.2 and III. 3.1.3.

⁶³ See Öhlinger/Eberhard, *Verfassungsrecht* (13th ed, facultas 2022), para 672 ff.

⁶⁴ Liability of Public Bodies Act [Bundesgesetz über die Haftung der Gebietskörperschaften und der sonstigen Körperschaften und Anstalten des öffentlichen Rechts für in Vollziehung der Gesetze zugefügte Schäden (Amtshaftungsgesetz - AHG)], § 1(1): „*The Federation, the Provinces, municipalities, other bodies of public law and the institutions of social insurance - hereinafter named legal entities - are liable under the provisions of Civil Law for any damage to any person or any property caused by unlawful acts of persons at fault when implementing the law on behalf of such legal entities; such persons implementing the law are not liable vis à vis the persons injured. Indemnity shall be paid only in terms of money.*“

climate action.⁶⁵

34. Third, it must be noted that the Constitutional Court has no competence to address omission by the legislator⁶⁶, nor to oblige the legislator to adopt a necessary law.⁶⁷ Even if this omission amounts to a human rights infringement. It is thus impossible for the Constitutional Court to impose an obligation for the Respondent to adopt new GHG emissions reduction targets, a carbon budget or GHG-reduction quantification on the mere basis of a fundamental rights infringement.⁶⁸ In its decision G 123/2023⁶⁹, the Constitutional Court confirmed that the repeal of the KSG or parts thereof would not “*be capable of directly redressing*

⁶⁵ See generally, Berka (n 29), para 1073; Egger, *Untätigkeit im Öffentlichen Recht* (2020); Ennöckl, *Klimaschutzrecht* (2023), 75 ff; Gamper, *Verfassungsgerichtsbarkeit und Gewaltenteilung* (2016), 114 ff; Holoubek, ‘Säumnis des Gesetzgebers’, in: Holoubek/Lang (ed), *Rechtsschutz gegen staatliche Untätigkeit* (2011) 247 ff; Korinek, ‘Die Verfassungsgerichtsbarkeit im Gefüge der Staatsfunktionen’, in: Korinek/Müller/Schlaich/von Arnim/Kirchhof, *Berichte und Diskussionen auf der Tagung der Vereinigung der Deutschen Staatsrechtslehrer zu Innsbruck vom 1. bis 4. Oktober 1980* (1981); Morscher, ‘Untätigkeit von Staatsorganen’, in: Funk/Holzinger/Klecatsky/Korinek/Mantl/Pernthaler (ed), *Der Rechtsstaat vor neuen Herausforderungen - FS Ludwig Adamovich* (2002) 477 ff; Oberndorfer/Wagner, ‘Gesetzgeberisches Unterlassen als Problem verfassungsrechtlicher Kontrolle - Landesbericht Österreich für den XIV. Kongress der Konferenz der Europäischen Verfassungsgerichte in Vilnius, Litauen vom 2. bis 7. Juni 2008’ (Conference of European Constitutional Courts/Konferenz der europäischen Verfassungsgerichte, 2008); Öhlinger/Eberhard (n 63), para 1002; Poltschak, ‘Verfassungsrechtliche Bindungen des Gesetzgebers im Kontext der Energiewende’ (2022) JRP 353; Rohregger/Pechhacker, (n 58), para 14; Schäffer/Kneihs, ‘Art 140 B-VG’, in Kneihs/Lienbacher (eds), *Rill-Schäffer-Kommentar Bundesverfassungsrecht* (18. Lfg 2017, Verlag Österreich), para 43 ff; Wille, ‘Probleme des gesetzgeberischen Unterlassens in der Verfassungsrechtswissenschaft’ (2009) EuGRZ 441; Zahrl, *Staatszielbestimmungen* (2024), 142 ff; VfSlg 14.453/1996, 19.040/2010.

⁶⁶ Ennöckl, *Klimaklagen Teil 2* (n 46), 188; Kirchmair/Krempelmeier (n 51), 87 f; Öhlinger/Eberhard (n 63), para 1007; Rohregger/Pechhacker (n 58), para 14; Schäffer/Kneihs (n 65), para 39 ff.

⁶⁷ See the Constitutional Court itself VfSlg 14.453/1996, 19.040/2010.

⁶⁸ VfGH 27 June 2023, G 123/2023-12, paras 52 f and 54. More general: Berka (n 29), para 1073, Öhlinger/Eberhard (n 63), para 1002; Rohregger/Pechhacker (n 58), para 14; Schäffer/Kneihs (n 65), para 43 ff.

⁶⁹ See VfGH 27 June 2023, G 123/2023-12, paras 52 f and 54.

*the impugned state of affair.*⁷⁰

35. For the sake of completeness, given the Respondent's reliance on EU law,⁷¹ it should be noted that the Applicant would also not be able to challenge the Respondent's projected non-compliance with its targets under the European Effort Sharing Regulation ("ESR").⁷² The National Energy and Climate Plan ("NECP") required by the ESR,⁷³ can also not be challenged before Austrian courts, since it is a non-binding policy document.

36. **To conclude, the deficiencies in the Respondent's current climate regulatory framework constitute a *systemic problem*, which accounts for the fact that the Applicant has no procedural safeguards "*capable of remedying directly the impugned state of affairs and [offers] reasonable prospects of success*"⁷⁴ of his arguable claim under Art 8.**

2.3. Existing case law confirms the lack of an effective remedy for the Applicant

37. Whilst the Applicant agrees with the Respondent that "*it should be possible*" to file a successful climate case,⁷⁵ judicial practice shows - without a doubt - that this is not the case.⁷⁶ In fact, as attested by the expert report commissioned by the Ministry for Climate Action "[...] *it would appear, on the basis of the Constitutional Court's previous case law on the strict admissibility requirements, of individual applications as almost impossible*

⁷⁰ CGAS (n 6), para 139.

⁷¹ Respondent Observations II.6. and III.2.3.1.

⁷² Regulation (EU) 2018/842 OJL 156, 19 June 2018, 26-42.

⁷³ Regulation (EU) 2018/842 OJL 156, 19 June 2018, 26-42.

⁷⁴ See *Balogh* (n 41) and *Sejdovic* (n 41), para 46.

⁷⁵ Respondent Observations, III.3.1.5.

⁷⁶ CGAS (n 6), para 139. See also *Balogh* (n 41), para 30; *Sejdovic* (n 41), para 46; *Vučković* (n 41), para 74; and *Gherghina* (n 41), para 85. See also; *Paksas* (n 41), para 75. See also the Court's subsidiary consideration in *S.A.S.* (n 41), para 6.

*to demonstrate direct legal affectedness.”*⁷⁷

38. The Applicant maintains that all the six decisions, five filed after the Applicant’s individual application, confirm the “*almost insurmountable hurdle for climate lawsuits*”⁷⁸ before the Constitutional Court. Generally speaking, the “*particular features*” of an individual application under Art 139/140 B-VG render it incompatible for human rights-based climate cases.⁷⁹ Out of the six cases filed, five of them were all rejected on procedural grounds.⁸⁰ To avoid repeating the comprehensive summary provided in the *Observations on the Facts* (see OF, section III, 1.3), the Applicant will only focus on the main findings and those decisions relevant to the present argument. Four of these cases were also based on an individual application procedure.⁸¹
39. One was a replication of the Applicant’s challenge by a person suffering from MS combined with Uhthoff Syndrome. That applicant sought to strictly confirm with the guidance the Constitutional Court’s provided in the Applicant’s case (“**second Uhthoff individual application**”).⁸² Once again the Constitution Court dismissed the claim and disregard the infringement caused by climate-harmful norms on the applicant’s legal sphere under Art 8.
40. The other cases were two challenges to the KSG filed by minors,⁸³ and one case

⁷⁷ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 20 f: “[...] so erscheint es auf dem Boden der bisherigen Rechtsprechung des VfGH zu den strengen Zulässigkeitsvoraussetzungen von Individualanträgen für Einzelne als nahezu unmöglich, eine unmittelbare rechtliche Betroffenheit darzutun.“

⁷⁸ Ennöckl, Klimaklagen (n 46), 188.

⁷⁹ CGAS (n 6), para 145.

⁸⁰ VfGH 27.06.2023, G 106-107/2022-10, V 140/2022-10; VfGH 27.06.2023, G 139/2021-11; VfGH 27.06.2023, G 123/2023-12; VfGH 27.06.2023, E 1517/2022-14; VfGH 12.03.2024, A 17/2023; VfGH 18.06.2024, G 2274/2023-7. See also: Respondent Observations III. 3.1.5, in which the Respondent only refers to four cases.

⁸¹ VfGH 27.06.2023, G 106-107/2022-10, V 140/2022-10; VfGH 27.06.2023, G 139/2021-11; VfGH 27.06.2023, G 123/2023-12; VfGH 18.06.2024, G 2274/2023-7.

⁸² VfGH 27.06.2023, G 106-107/2022-10, V 140/2022-10, submitted as Doc 37 in the Annex.

⁸³ VfGH 27.06.2023, G 123/2023; VfGH 18.06.2024, G 2274/2023.

against the KSG filed by an individual.⁸⁴ In all these cases, the Constitutional Court refused to consider the applicants as being directly affected by the KSG. Notably, even children challenging the KSG twice, based on their right to intergenerational equity enshrined in the constitutional rights granted to children (“*Bundesverfassungsgesetz über die Rechte der Kinder*”) were unsuccessful.⁸⁵ The minors argued that they must be granted standing to challenge the KSG arguing that the requirement of a “direct affectedness” under Art 139/140 B-VG should be approached more holistically due to the intergenerational character of the KSG.⁸⁶

41. The Constitutional Court did not address this important procedural issue but rejected these cases at an even earlier procedural stage. The “guidance” given by the Constitutional Court was that as a result of the concrete structure and drafting of the KSG, a repeal of it - in parts or as a whole - cannot result in a legal framework that would remedy any (alleged) infringement as required under Art 139/140 B-VG.⁸⁷ The recent expert report commissioned by the BMK confirmed that *“a repeal of the KSG by way of an individual application procedure seems*

⁸⁴ VfGH 27.06.2023, G 139/2021-11.

⁸⁵ VfGH 27.06.2023, G123/2023; VfGH 18.06.2024, G2274/2023.

⁸⁶ VfGH 27.06.2023, G123/2023, para 22 ff.

⁸⁷ VfGH 27.06.2023, G 123/2023-12, para 46 ff. Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 34 *“This necessity of identifying the ‘seat of unconstitutionality’ in positive statutory law corresponds to the division of roles between parliamentary legislation and controlling constitutional jurisdiction in the democratic constitutional system of the Austrian Federal Constitution. Of course, the Constitutional Court also expressly refers to this tense relationship when it states with regard to the individual application for the repeal of parts of the KSG that ‘the requested repeal would constitute an impermissible act of positive legislation by the Constitutional Court, since the repeal of the contested word sequences would give the law a content that could not be attributed to the legislature.’* [“Diese Notwendigkeit der Identifikation des ‘Sitzes der Verfassungswidrigkeit’ im positive Gesetzesrecht korrespondiert mit der Rollenverteilung von parlamentarischer Gesetzgebung und kontrollierender Verfassungsgerichtsbarkeit im demokratisch-rechtsstaatlichen System der österreichischen Bundesverfassung. Auf dieses Spannungsverhältnis nimmt der VfGH Freilich auch ausdrücklich Bezug, wenn zum Individualantra auf Aufhebung von Teilen des KSG ausgeführt wird, dass ‘die beantragte Aufhebung einen unzulässigen Akt positiver Gesetzgebung durch den VfGH bedeuten [würde], da dem Gesetz durch die Aufhebung der angefochtenen Wortfolgen ein dem Gesetzgeber nicht zuzunehmender Inhalt zukommen würde.”]

almost impossible”.⁸⁸

42. Based on the cases examined above and summarized in OF, section III, 1.3, individuals cannot establish “*direct affectedness*” in climate-related judicial review proceedings involving human rights violations. Furthermore, Austrian domestic courts currently lack - and to some extent are unable to fulfil - a “*key role*”⁸⁹ in climate change litigation. As a result, they fail to ensure that “*Convention obligations are observed*”⁹⁰ by the Respondent.
43. It follows from the above that none of the existing case law provides a guidance to the Applicant to file an “adequate” individual application.
44. **To conclude, the foregoing demonstrates that the Applicant has no effective remedy available “not only in theory but in practice”⁹¹ as “confirmed or complemented by practice or case-law”⁹² to address the Respondent’s failure to**

⁸⁸ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 35: „*What is clear from this is not only the particular difficulty of identifying an 'anchor' in existing legislation for asserting unconstitutional legislative omission; it also makes it apparent that, as things stand, it is highly unlikely that a successful action based on an individual application will be possible against the KSG, given its specific structure. In order to effectively implement the fundamental right to protection in the context of climate protection and in particular on the basis of the KSG, specific mechanisms would instead be needed to provide protection against default if politicians remain inactive despite exceeding binding reduction targets.*” [„Deutlich wird insofern nicht nur die besondere Schwierigkeit, im bestehenden Gesetzesrecht einen „Anker“ für die Geltendmachung verfassungswidrigen gesetzgeberischen Unterlassens auszumachen; ersichtlich wird damit auch der Umstand, dass im Besonderen gegen das KSG seiner spezifischen Konstruktion ein erfolgreiches Vorgehen mittels Individualantrags **nach derzeitigem Stand kaum möglich** sein dürfte. Um grundrechtliche Schutzpflichten im Kontext des Klimaschutzes und im Besonderen auf dem Boden des KSG zu effektuieren, bedürfte es stattdessen spezifischer Mechanismen zur Gewährung eines Säumnisschutzes, wenn die Politik trotz Überschreitens verbindlicher Reduktionspfade untätig bleibt.“]

⁸⁹ Ibid.

⁹⁰ *KlimaSeniorinnen* (n 1), para 639.

⁹¹ *Akdivar and Others* (n 61), para 66 cited also in *Duarte* (n 4), para 215. See also *Molla Sali* (n 61), para 89; *Mocanu and Others* (n 61), para 225; *Dalia* (n 61), para 38; *McFarlane* (n 7), para 107; *Vučković* (n 41), para 77.

⁹² See *McFarlane* (n 7), paras 117 and 120, and *Mikolajová v. Slovakia* App no 4479/03 (ECtHR, 18 April 2011), para 34.

adopt a climate framework in line with the 1.5°C-limit.⁹³ The Respondent's allegation that these cases would guide the Applicant towards a successful remedy is without foundation.

3. The Respondent failed to prove the existence of an effective remedy concerning Art 6, 8 and 13

45. In this section, the Applicant will demonstrate that the Respondent failed to discharge its burden of proof, as it did not show that an effective remedy capable of providing adequate redress exists for the Applicant.

46. At the outset, the Applicant wishes to highlight that his case is different from *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC]⁹⁴ (“CGAS”). In this case, the applicant association did not exhaust an available remedy as it had doubts as to the prospects of success of this particular remedy. In response, the Court reiterated its consistent case law that “*mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress in the light of the specific facts of the case.*”⁹⁵ More significantly, the Court was satisfied with the examples of available remedies provided by the government showing that the remedy was not obviously futile.⁹⁶ To the contrary, in the present case, the Respondent has not produced any concrete example whatsoever as to how the Applicant could enforce his right to protection under Art 8 in the context of climate change. As will be shown, domestic case law addressing “*identical or similar circumstances*”,⁹⁷ as well as numerous legal scholars point to the absence of a potentially effective remedy to address the Respondent's failure to take adequate climate action.

⁹³ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 23 ff.

⁹⁴ CGAS (n 6).

⁹⁵ Ibid, para 159.

⁹⁶ Ibid, para 156.

⁹⁷ Ibid, para 156.

47. The Respondent argues that the Applicant's case is inadmissible by relying on the alleged non-exhaustion of domestic remedies.⁹⁸ As a result of this, "*it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time.*"⁹⁹ The Applicant will proceed to demonstrate that the Respondent's assertion that "*the Austrian legal system offers comprehensive legal protection*"¹⁰⁰ is unsubstantiated.

48. In its Observations, the Respondent refers to two types of remedies: (i) a constitutional challenge under Art 139/140 against norms "*in a closer context to climate issues*"¹⁰¹ and (ii) a repeat-litigation of the same challenge brought by the Applicant. The Applicant will address each of these proposals in turn.

3.1. The Respondent fails to identify any alternative constitutional challenge

49. The Respondent claims that "[t]he applicant would have had the opportunity to choose from the numerous regulations of the Austrian legal regime that are relevant to the environment and climate those which are in a closer context to climate issues."¹⁰² Therefore he should have filed a differently drafted constitutional challenge under Art 139/140 B-VG. It is unclear what the Respondent's proposal points at.

50. The Respondent's proposal requires clarification regarding its scope: it remains uncertain whether the focus is specifically on individual pieces of climate-harmful legislation or encompasses the broader issue of insufficient climate mitigation ambition. Consequently, the Respondent has failed to identify an effective remedy, available in theory and in practice at the relevant time which the Applicant could have exhausted.

51. In any case, to satisfy its burden of proof under Art 35, the Respondent must at

⁹⁸ Respondent Observations III. 1.6.

⁹⁹ CGAS (n 6), para 143.

¹⁰⁰ Respondent Observations III.3.1.3.

¹⁰¹ Respondent Observations III.3.1.3.

¹⁰² Respondent Observations III.3.1.3.

least demonstrate which specific legal norm the Applicant could have challenged under the stringent criteria of Art 139/140 B-VG, and how such challenge would provide redress for the Applicant.¹⁰³

52. For the sake of completeness, the Applicant will therefore rebut the Respondent's assertion that a constitutional challenge could have been an effective remedy under both limbs of his Art 8 claim.
53. Regarding the first limb of his Art 8 claim (i.e. challenge of climate harmful measures (see OF, section III, 2.10)), the Applicant has demonstrated that he has fully exhausted the very remedy suggested by the Respondent. He carefully assessed all the norms "*in a closer context to climate issues*"¹⁰⁴ and challenged those that he could establish a link to, under the stringent criteria of Art 139/140 B-VG¹⁰⁵ (see also OF, section III, 1.2).
54. The Respondent also fails to show how the Applicant could have challenged any other norms "*in a closer context to climate issues*"¹⁰⁶ without being "*bound to fail*"¹⁰⁷ at the very outset.¹⁰⁸ Not only does the Respondent fail to identify which norms it refers to concretely, but it also omits to specify which link could have been established by the Applicant (despite confirming that such link is essential for the

¹⁰³ *CGAS* (n 6), para 143: "*it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement [...]*." See also *Norbert Sikorski v Poland* App no 17599/05 (ECtHR, 22 October 2009), para 117; *Sürmeli v Germany* [GC] App no 75529/01 (ECtHR, 8 Juni 2006), paras 110-112.

¹⁰⁴ Respondent Observations III.3.1.3.

¹⁰⁵ *CGAS* (n 6), para 145.

¹⁰⁶ Respondent Observations, para III.3.1.3.

¹⁰⁷ *Sejdovic* (n 41), para 55 cited in *CGAS* (n 6), para 141.

¹⁰⁸ *Sejdovic* (n 41), para 55 cited in *CGAS* (n 6), para 141.

Applicant to be granted standing)¹⁰⁹ (see also OF, section III, 1.2.).¹¹⁰ This led scholars, who analysed the existing domestic case law,¹¹¹ to conclude that the filing of climate-related individual applications currently face “*almost insurmountable hurdles*”¹¹² (see paras 37-43).

55. Regarding the second limb of his Art 8 claim, the Respondent fails to show how any challenge to any norms allegedly “*in a closer context to climate issues*”¹¹³ would result in the adoption of the required framework set out in *KlimaSeniorinnen*.¹¹⁴ As shown in Section II, given the harms the Applicant suffers from, this is undoubtedly the only remedy “*capable of directly redressing the impugned state of affairs*.”¹¹⁵ Yet, the Respondent fails to demonstrate how “*the particular features of [its] legal system and the scope of jurisdiction of the court responsible for carrying out this review*”¹¹⁶ would adequately address the Applicant’s need for protection and “*offer reasonable prospects of success*.”¹¹⁷ This is because an individual application to the Constitutional Court cannot be used to compel the Respondent to adopt the necessary framework (see paras 24 *et seq* and OF, section III, 1.2). Should a repeal of a norm “*in a closer context to climate issues*”¹¹⁸ via a constitutional challenge be capable of leading to the adoption of such framework (*quod non*), the Applicant would nevertheless still have to satisfy the very stringent standing requirements explained above (see para 54).

56. To conclude, the above demonstrates that the Respondent failed to satisfy

¹⁰⁹ Respondent Observations II.4.1.5.

¹¹⁰ Not surprisingly, the Respondent does not mention the KSG as a norm the Applicant could have challenged. This is because the KSG does not give rise to subjective rights for individuals, not even indirectly.

¹¹¹ See, e.g., Schulev-Steindl (n 21), 18; Ennöckl, ‘Klimaklagen Teil 2’ (n 46), 188; Marhold, *Klimaklagen* (2024), 50.

¹¹² Ennöckl, ‘Klimaklagen Teil 2’ (n 46), 188.

¹¹³ Respondent Observations III.3.1.3.

¹¹⁴ See *KlimaSeniorinnen* (n 1), para 550 ff.

¹¹⁵ *GCAS* (n 6), para 139.

¹¹⁶ *GCAS* (n 6), para 145.

¹¹⁷ *GCAS* (n 6), para 139.

¹¹⁸ Respondent Observations III.3.1.3.

its burden of proof when arguing a constitutional challenge of a different norm in “*closer context to climate issues*”¹¹⁹ would be capable of effectively addressing the Applicant’s need for protection under Art 8.

3.2. The Respondent’s proposal for repeat-litigation is unsubstantiated

57. In section III, paras 3.1.3 and 3.1.5 of its Observations, the Respondent argues that the Applicant’s constitutional challenge would have succeeded if drafted differently.¹²⁰ On this basis, it suggests that “[s]ince an individual application for judicial review of legislation is subject to no time limits, the applicant is free to lodge another application to pursue his climate protection aim”¹²¹ (“**repeat-litigation**”).¹²² In other words, the Respondent plainly says that the Applicant should just “try again”. The exact scope of this proposal not only lacks clarity, but it also raises serious concerns with respect to the Applicant’s right to file an individual petition with this Court under Art 34.

58. As stated above, the Applicant stresses that legislative omissions in general, and lack of climate ambition specifically, cannot currently be addressed under Austrian law¹²³ and specifically not through an individual application to the Constitutional

¹¹⁹ Ibid.

¹²⁰ Ibid, III.3.1.3 and III.3.1.5.

¹²¹ Ibid, III.3.1.3.

¹²² Ibid.

¹²³ Ennöckl/Handig/Polzer/Rathmayer/Vouk, „Klima Seniorinnen erkämpfen Recht auf Klimaschutz vor dem EGMR“ (2024) OJZ 624, 631: „Das wesentliche Hindernis für erfolgreiche Klimaklagen ist vielmehr, dass der VfGH die Untätigkeit des Gesetzgebers, einen konventionskonformen Klimaschutzrechtsrahmen zu beschließen, aufgrund seiner vom B-VG vorgegebenen Befugnisse nicht wirksam aufgreifen kann.“ [„Rather, the main obstacle to successful climate lawsuits is that the Constitutional Court cannot effectively address the legislature’s failure to adopt a climate protection legal framework that is in line with the Convention due to its powers under the Constitution.“]. See further Rohregger/Pechhacker (n 58), para 6. See also, generally, Berka (n 29), 1073; Egger (n 65); Ennöckl, Klimaschutzrecht (n 65), 75 ff; Gamper (n 65), 114 ff; Holoubek, (n 65), 247 ff; Korinek (n 65); Morscher, (n 65), 477 ff; Oberndorfer/Wagner (n 65), para 1002; Poltschak (n 65), 353; Rohregger/Pechhacker (n 58), para 14; Schäffer/Kneihls (n 65), para 43 ff; Wille (n 65), 441; Zahrl (n 65), 142 ff; VfSlg 14.453/1996, 19.040/2010.

Court (see para 34). If the legislator failed to adopt a law which calls for the setting of future targets or the obligation to implement measures, this omission cannot be addressed by way of judicial review (see para 28). The fact that the KSG precludes such possibility is at the heart of his claim under Art 13 (see paras 24 *et seq* above). In other words, a repeat-litigation would still not be able to change this *status quo*.

59. With regards to repeat-litigation concerning the challenge of fossil fuel subsidies, the Applicant emphasizes the following: First, the individual application is an extraordinary and not an ordinary remedy procedure¹²⁴ resulting in a final and binding decision by the Constitutional Court. Repeating it solely because the first application was unsuccessful is not a domestic remedy that needs to be exhausted under this Court's well-established case law.¹²⁵ This would also be in fundamental contradiction with his right under Art 34, and even more so in a case concerning the "*magnitude of the risks and the challenges posed by anthropogenic climate change*."¹²⁶

60. Second, a new challenge filed by another person with Uhthoff Syndrome was rejected on procedural grounds despite aligning with the Constitutional Court's reasoning in the Applicant's case.¹²⁷ This decision clearly shows that there is no reasonable chance of success for the Applicant, were he to re-submit his individual application. Consequently, the Respondent's proposal that the Applicant resubmits his Individual Application is irrelevant.

61. Considering the foregoing, the Applicant concludes that the Respondent has failed to discharge its burden of proof in relation to the alleged non-

¹²⁴ VfSlg 7407/1974; VfSlg 14453/96; Ennöckl, Klimaklagen Teil 2 (n 46), 188; Rohregger/Pechhacker (n 58), Rz 14; Öhlinger/Eberhard (n 63), paras 697, 1007; see with further references, Fuchs et al., 'BMK Study Climate Lawsuits', 17: "*The individual application is designed as a strictly subsidiary legal remedy*." [*Der Individualantrag ist al sein streng subsidiärer Rechtsbehelf gestaltet.*"]

¹²⁵ *Berdzenishvili v Russia* (dec.) App no 31697/03 (ECtHR, 29 January 2004), page 9; *Tucka v the United Kingdom* (no. 1) (dec.) App no 34586/10 (ECtHR, 18 January 2011), para 15; *Haász and Szabó v Hungary* App nos 11327/14 and 11613/14 (ECtHR, 13 October 2015), paras 36-37.

¹²⁶ *KlimaSeniorinnen* (n 1), Dissenting Opinion Tim Eicke, para 5.

¹²⁷ VfGH 27.06.2023, G 106-107/2022-10, V 140/2022-10, submitted as Doc 37 in the Annex.

exhaustion of domestic remedies. In particular, the Respondent has failed to show which remedies are capable of addressing the Applicant's need for an adequate climate framework in line with the 1.5°C-limit. As confirmed by case law, the individual application under Art 139/140 B-VG is an inadequate and ineffective remedy for these purposes.¹²⁸ Further, the Respondent failed to rebut that the Applicant did fully exhaust domestic remedies regarding the first limb of his Art 8 claim.

II. Victim status of the Applicant

1. Is the application admissible? In particular:

[...]

b. Can the applicant claim to be a victim of a violation of Article 8 of the Convention, within the meaning of Article 34 of the Convention (see *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, §§ 460-472, 478-488, 527-535, 9 April 2024)?

62. As already demonstrated in the AS paras 1-9, the Applicant is both, an actual and a potential, victim of the Respondent's failure to regulate GHG-emissions in accordance with the 1.5°C-limit under Art 8 within the meaning of Art 34 of the Convention.

¹²⁸ Fuchs et al., 'BMK Study Climate Lawsuits', 35: "In this respect, it is not only the particular difficulty of identifying an "anchor" in existing legislation for the assertion of unconstitutional legislative omission that becomes clear; it is also the fact that no successful action against the KSG in particular is likely to be possible by means of an individual application due to its specific construction." ["Deutlich wird insofern nicht nur die besondere Schwierigkeit, im bestehenden Gesetzesrecht einen „Anker“ für die Geltendmachung verfassungswidrigen gesetzgeberischen Unterlassens auszumachen; ersichtlich wird damit auch der Umstand, dass im Besonderen gegen das KSG seiner spezifischen Konstruktion ein erfolgreiches Vorgehen mittels Individualantrags nach derzeitigem Stand kaum möglich sein dürfte.“]

63. The infringement of his right to protection guaranteed under Art 8 does not concern “*any effect on the price of train tickets*”¹²⁹ as purported by the Respondent. Rather, as explained in great detail, his claim concerned the Respondent’s failure to set an end to harmful subsidies exacerbating the very crisis he suffers from, and its failure to adopt an adequate climate framework capable of mitigating these harmful effects (see paras 15 *et seq*).
64. In the *KlimaSeniorinnen* decision, this Court made clear that “*State’s actions and/or omissions in the context of climate change*”¹³⁰ can affect an individual’s rights¹³¹ and can be examined by this Court “*without undermining the exclusion of actio popularis from the Convention system and without ignoring the nature of the Court’s judicial function.*”¹³² The Court thus recognized that individuals may claim victim status for climate-related right violations, provided they fulfil several high threshold-criteria. The Court added that whether an individual “*meets [the threshold for fulfilling the victim status criteria in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change] will depend on a careful assessment of the concrete circumstances of the case.*”¹³³
65. Generally for a person to be considered a victim pursuant to Art 34, he/she has to demonstrate the existence of a real risk of “direct impact” caused by the impugned measure or omission.¹³⁴ This Court has held that a person - “*under highly exceptional circumstances*”¹³⁵ - may establish potential victimhood, if he/she can “*produce reasonable and convincing evidence of the likelihood that a violation affecting him or her personally*

¹²⁹ Respondent Observations III.3.2.3

¹³⁰ *KlimaSeniorinnen* (n 1), para 481

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid, para 488.

¹³⁴ Ibid, para 486.

¹³⁵ Ibid, para 470.

*will occur; mere suspicion or conjecture being insufficient in this regard.”*¹³⁶

66. Focusing on the specific requirements for establishing victim status in the context of climate change-related violations, the Court held that an individual applicant needs to demonstrate a “*high intensity of exposure of the applicant to the adverse effects of climate change*”; and “*a pressing need to ensure the applicant’s individual protection*.”¹³⁷ In assessing these criteria, the Court will engage in an *in concreto* and circumstantial analysis,¹³⁸ having due regard to elements such as:

- Circumstances such as the prevailing local conditions and individual specificities and vulnerabilities;
- 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);
- The nature of the applicant’s vulnerability.¹³⁹

67. In this section, the Applicant will demonstrate that he meets the criteria for individual victim status set out by this Court in *KlimaSeniorinnen*.¹⁴⁰ Due to his individual specificities and vulnerabilities, he is both an actual and a potential

¹³⁶ Ibid, para 470 quoting *Asselbourg and Others v Luxembourg* (dec.) App no 29121/95, ECHR 1999-VI, and *Senator Lines GmbH v Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom* [GC] App no 56672/00 (ECtHR, 10 March 2004).

¹³⁷ *KlimaSeniorinnen* (n 1), para 527, referring to paras 487-488; see also para 531.

¹³⁸ Ibid, para 488.

¹³⁹ Ibid.

¹⁴⁰ Ibid, 487.

victim of the Respondent's violations of his rights under Art 8 within the meaning of Art 34.

68. As already shown by the submitted evidence and the Additional Submission to his Application (AS, paras 1-2), the Applicant is personally and directly affected by the adverse effects of climate change, caused in part¹⁴¹ by the Respondent's failure to adopt and implement an adequate climate regulatory framework in line with the 1.5°C-limit. The interference with his rights under Art 8 also results from climate harmful measures, in particular the Kerosene tax privilege and the VAT tax privilege for cross-border flights.
69. As noted by this Court “[t]he concept of ‘private life’ is a broad term not susceptible to exhaustive definition.”¹⁴² It covers the physical and psychological integrity of a person, and therefore embraces “multiple aspects of the person’s physical and social identity.”¹⁴³ Additionally, Art 8 “protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world.”¹⁴⁴
70. The Applicant is a male Austrian national born in [REDACTED] and [REDACTED] at time of writing. He was diagnosed with multiple sclerosis (“MS”) in 2004 at the age 23.¹⁴⁵ MS is an autoimmune neurodegenerative disease of the central nervous system¹⁴⁶ that affects mobility and commonly causes a gait disorder in the patient (amongst other symptoms).
71. In 2007, the Applicant noticed for the first time a temperature sensitivity of his muscular system,¹⁴⁷ which was later diagnosed as being a case of Uhthoff Syndrome. As a result of this syndrome, the Applicant’s MS symptoms worsen

¹⁴¹ Ibid, para 444.

¹⁴² *S. and Marper v the United Kingdom* [GC] App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008), para 66.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Personal statement of the Applicant (26 March 2021) (submitted as Doc 3 & 3b in the Annex), 1.

¹⁴⁶ Original Application, Additional Submission (25 March 2021), para 1.

¹⁴⁷ Personal statement of the Applicant (26 March 2021) (submitted as Doc 3 & 3b in the Annex), 1.

with the increase in external temperatures.¹⁴⁸ This condition can only be alleviated by decrease of overall body temperature,¹⁴⁹ as medical treatment, relief or cure exists to date¹⁵⁰ (see also OF, section II, para 2.8). It is particularly noteworthy that **the Respondent has not disputed that the Applicant suffers from the Uhthoff Syndrome**, and as such it hasn't clearly disputed the victim status of the Applicant.¹⁵¹

72. Due to the effects of the Uhthoff Syndrome, the Applicant experiences a marked correlation between ambient temperature and functional capacity. When external temperatures remain below approximately 25°C, he maintains the ability to move either independently or with the assistance of crutches, thereby preserving a reasonable level of autonomy in daily activities. Upon reaching the critical temperature threshold of 25°C, however, his muscular function undergoes a significant deterioration, and he becomes wheelchair-bound.
73. When temperatures reach about 30°C or higher, the Applicant is not even able to push the wheels of a mechanical wheelchair and therefore becomes dependant on an electric wheelchair. From then on, he needs external assistance for basic (mobility) needs. To mitigate the harm he suffers from, the Applicant stays indoors in air-conditioned spaces, mainly at home, when outdoor temperatures reach or exceed 25°C, thereby mitigating the risk of compromised mobility and ensuring personal safety. The Applicant's periods of home confinement have progressively increased over recent years, corresponding with rising global temperatures.
74. The Applicant's temperature sensitivity and vulnerability to heat is thus no abstract

¹⁴⁸ Original Application, Additional Submission (25 March 2021), para 1.

¹⁴⁹ Austrian Association for Multiple Sclerosis, 'Uhthoff-Phänomenon' (*oemsg*) <<https://www.oemsg.at/multiple-sklerose/leichter-leben-mit-ms/uhthoff-phaenomen/>> accessed 27 February 2025.

¹⁵⁰ Christogianni et al., 'Temperature sensitivity in multiple sclerosis: An overview of its impact on sensory and cognitive symptoms' (2018) 5 Temperature 208 (submitted as Doc 2 in the Annex), 208-223.

¹⁵¹ Respondent Observations I.1.1 and III.3.2.4.

inconvenience, rather it entirely shapes his daily existence. In Austria, even in cooler regions such as his, days exceeding 25°C have become increasingly common due to climate change. Summers, once a time for outdoor activities and connection with loved ones, now confine him indoors for days on end.¹⁵² Since the filing of the Application, [REDACTED] recorded 53.9, 61.1, and 71.0 days with maximum temperatures reaching or exceeding 25°C during the years 2021, 2022, and 2023 respectively.¹⁵³

75. **The year 2024 counted 74.7 days above 25°C, which included 26.9 days above 30°C.**¹⁵⁴ In other words, in 2024, the Applicant experienced approximately 2.5 months of limited mobility during which he was unable to leave his home. During this period, he endured 16.6 days in heatwaves.¹⁵⁵ During these periods, the Applicant's ability to move is even further restricted. In contrast, in [REDACTED] - the birth year of the Applicant - 15.7 days above 25°C and 0.8 days above 30°C were recorded in [REDACTED].¹⁵⁶ The 5 years presented here and in the previous paragraph are representative of the increasing temperature trend seen in the data and described in paras 82 *et seq* below.

76. Once an avid baseball player and enthusiastic hiker, the Applicant's physical activities have significantly diminished due to his MS diagnosis, worsened by the Uhthoff Syndrome. This decline has stripped away a crucial foundation of his mental and emotional strength. The escalating summer temperatures in his region have further restricted his already limited mobility, causing his remaining vitality to decrease substantially over time and gradually isolating him from society.¹⁵⁷

77. Living in one of Austria's coolest regions, the Applicant must still adapt to

¹⁵² A cooling vest could only grant him relief for about two hours, and therefore its use requires careful planning. See the Applicant's second Personal Statement (submitted as Doc 32 in the Annex), para 2.

¹⁵³ Rieder et al., submitted as Doc 36 in the Annex, 18 (Table 2).

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, 17 (Table 2)

¹⁵⁷ See the Applicant's second Personal Statement (submitted as Doc 32 in the Annex).

temperature extremes. His primary coping strategy involves isolating himself in his specially equipped home until temperatures drop enough to permit safe outdoor movement. Alternatively, he uses a cooling vest that provides approximately two hours of enhanced mobility during heat waves. However, this solution requires precise timing, as he must return to a cooled environment before the vest's cooling effect expires.¹⁵⁸

78. The Applicant recalls an episode in 2007 when - still not fully familiar with the effects of Uthoff - he underestimated the impact of increasing temperatures. He got caught outside by unexpectedly hot temperatures and found himself suddenly completely incapacitated. Alone, and without any means to seek outside help, he was forced to crawl on the ground until he was finally able to reach his home.¹⁵⁹
79. The rising temperatures profoundly affect all daily aspects of his life. Basic activities such as food shopping and attending medical appointments now demand meticulous preparation and planning. During periods of heat, his social connections have severely diminished, as outings with his wife or visits to see his friends have become rare, if not impossible. This leaves him increasingly isolated and dependent on others' (particular his wife's) availability.
80. In summer, due to the late sunset, the only moment of the day during which he can socialize without any restriction is late at night, which - especially during the week - is not compatible with his friend's working schedules. Even hosting friends is constrained by his ability to move, his energy level and the challenge of maintaining a sufficiently cool environment for longer periods of time. As such during the days during which the critical temperature threshold is reached, the Applicant becomes mostly unable to "*develop relationships with other human beings and*

¹⁵⁸ See the Applicant's second Personal Statement (submitted as Doc 32 in the Annex), para 2.

¹⁵⁹ Ibid, para 3.

the outside world.”¹⁶⁰ This isolation weighs heavily on his psychological well-being.¹⁶¹

81. As the Court recalled, under Art 8, the right to private and family life encompasses “a right to personal development, and the right to establish and develop relationships with other human beings and the outside world.”¹⁶² While some limitations experienced by the Applicant stem directly from his MS condition, having Uhthoff Syndrome creates additional restrictions. Without the Uhthoff Syndrome, he would still be able to participate in less demanding outdoor activities such as walking, attending friends’ baseball games, or having coffee in town on a summer day.¹⁶³ In other words, the worsening of his MS symptoms induced by increasing temperatures (triggering his Uhthoff syndrome) increasingly infringe on the Applicant’s right to develop relationships with other human beings and the outside worlds protected under Art 8, and severely impact his private and family life.

82. To demonstrate that he fulfils the victim status criteria set out by this Court in para 488 of *KlimaSeniorinnen*, the Applicant has commissioned a report by three Austrian climatologists, Prof. Dr. Harald Rieder, Prof. Dr. Herbert Formayer, Dr. Benedikt Becsi (“**Rieder et al. 2025**”). This report shows temperature increases at the Applicant’s place of residence. A summary of the report is provided in the Observation on the Facts (see OF, section II, 2.10). In the following paragraphs, the Applicant will highlight the main findings of the Rieder et al. 2025 report, which confirm the high intensity with which he is exposed to the adverse effects of climate change.

83. Rieder et al. 2025 highlight the impacts of the current overall and accelerating warming at the Applicant’s place of residence in Austria.¹⁶⁴ The report

¹⁶⁰ *Denisov v Ukraine* [GC] App no 76639/11 (ECtHR, 25 September 2018), para 95. See also: *Bărbulescu v Romania* [GC] App no 61496/08 (ECtHR, 5 September 2017), para 71.

¹⁶¹ See the Applicant’s second Personal Statement (submitted as Doc 32 in the Annex).

¹⁶² *Denisov* (n 160), para 95. See also: *Bărbulescu* (n 160), para 71.

¹⁶³ See the Applicant’s second Personal Statement (submitted as Doc 32 in the Annex).

¹⁶⁴ Rieder et al. (submitted as Doc 36 in the Annex).

distinguishes between the following indicators¹⁶⁵:

- 1) “Summer days” defined as “*number of days per year with a maximum temperature of at least 25 °C*”;
- 2) “Hot days”, defined as the “*number of days per year with a maximum temperature of at least 30 °C*”;
- 3) “Days in heatwaves” which it qualifies as a phenomenon “*when at least three consecutive days with maximum temperatures of at least 30 °C occur. It extends by each further consecutive day with a maximum daily temperature of at least 25°C under the condition that the average daily maximum temperature of the heat wave does not fall below 30°C.*”
- 4) These definitions are standard definitions, which are commonly used in the field of meteorology and climatology.

84. Rieder et al. 2025 find that, in the Applicant’s place of residence, “*the number of summer days per year has more than doubled from about 30 (1960s to 1980s)*” to 65 days under the current climate conditions.¹⁶⁶ It adds that “*hot days tripled from less than five to more than 15 per year. And while consecutive heat waves rarely occurred before the 1990s in [REDACTED] the average number of days in heat waves now amounts to more than 10 per year.*”¹⁶⁷ Based on these findings, Rieder et al. 2025 conclude that there is a clear increasing temperature trend from the 1980s onwards, and the hot temperature extremes (hot days and heatwaves) have increased faster than more moderate temperatures.¹⁶⁸

85. More concretely, under a **scenario were global temperatures reach 1.5°C above pre-industrial levels** (“GWL1.5”), the average number of summer days in [REDACTED] increases to 56.7 while the average number of hot days increases to 11.7.

¹⁶⁵ Ibid, 5.

¹⁶⁶ Ibid, 7 f.

¹⁶⁷ Ibid, 8.

¹⁶⁸ Ibid, 8 and 13.

Additionally, [REDACTED] experiences an average of 7.3 days in heatwaves.¹⁶⁹ In extreme years, represented in Rieder et al. 2025 by the “**GWL1.5 (P95)**” values, these numbers can reach up to 84.9 summer days, 27.6 hot days and 28.7 days in heatwaves, meaning that most hot days will not occur as single events, but consecutively.¹⁷⁰

86. Under a **scenario where global temperatures reach 2°C above pre-industrial levels (“GWL2.0”)**, the average number of summer days in [REDACTED] increases to 61.5; the average number of hot days is 14.6, and the average number of days in heatwaves is 10.0.¹⁷¹ The most extreme years under global warming level of 2°C (“**GWL2.0 (P95)**”), show an increase to 92.0 summer days, 34.7 hot days and 37.6 days in heatwaves.¹⁷²

87. The Climate Action Tracker estimates that a continuation of current policies will lead to a median global warming of +2.7°C by 2100.¹⁷³ Rieder et al. 2025 conclude, that under a **scenario where global temperatures reach 3°C above pre-industrial levels (“GWL3.0”)**, the average number of summer days will increase to 70.4, the number of hot days to 18.8 and the days in heatwaves to 15.3.¹⁷⁴ The number of summer days, hot days and days in heatwaves in extreme years of a global warming level of 3.0°C (“**GWL3.0 (P95)**”) amount to 105.6, 47.8 and 53.5 days.¹⁷⁵

88. These crucial findings are clearly visible in the following graphs:

¹⁶⁹ Ibid, 10 (Figure 4) and 11 (Table 1).

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Climate Action Tracker, ‘Warming Projections Global Update’ (2024), I <https://climateactiontracker.org/documents/1277/CAT_2024-11-14_GlobalUpdate_COP29.pdf> accessed 28 February 2025.

¹⁷⁴ Rieder et al. (submitted as Doc 36 in the Annex), 10 (Figure 4) and 11 (Table 1).

¹⁷⁵ Rieder et al. (submitted as Doc 36 in the Annex), 10 (Figure 4) and 11 (Table 1).

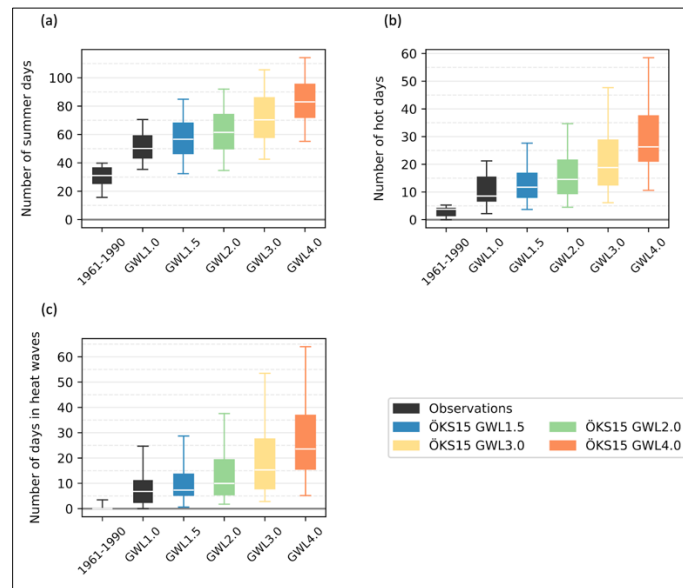


Diagram description: This diagram originates from the Rieder et al. 2025 report (Figure 4) and shows past and future climate conditions for [REDACTED]. The different indicators are (a) Summer Days (daily maximum temperature $\geq 25^{\circ}\text{C}$), (b) Hot Days (daily maximum temperature $\geq 30^{\circ}\text{C}$) and (c) Days in heatwaves. The respective Global Warming Level is described by a number following the term “GWL”: GWL2.0 means a Global Warming Level of 2.0°C temperature rise to the pre-industrial period (1850-1900). Black boxes are derived from the gridded observational data (“1961-1990” and “GWL1.0”), coloured boxes from climate model data.

89. Applying these numbers to the present case, they show that the prevailing local conditions today amount to a clear overall increase for all three relevant indicators: summer days, hot days and days in heatwaves. As mentioned above, in 2024, the **number of days in which the Applicant became wheelchair-bound amounted to 74.7 days or approximately 2.5 months.**¹⁷⁶

90. To put this figure into perspective, 74.7 days correspond to 20% of a year or 1.4 days per week. According to Rieder et al. (2025), 2024 qualifies as an extreme year under currently observed conditions. During the period spanning 1961-1990,

¹⁷⁶ When calculating the amount of days during which the Applicant becomes incapacitated, one must take into account that summer days subsume both hot days and days in heatwaves, given that the temperature during the latter two necessarily go beyond 25°C .

which includes the Applicant's birthyear (■■■■■) the average number of summer days was 31.1.¹⁷⁷ In contrast, the Applicant experienced more than double this number of summer days in 2024.

91. To add a further perspective, extreme years under GWL1.5 (P95), GWL2.0 (P95) and GWL3.0(P95) are projected to have approximately 84.9, 92.0 and 105.6 summer days respectively.¹⁷⁸ During these periods, if the Applicant experiences these GWL in his lifetime, he can expect to spend approximately 2.8, 3 and 3.5 months per year, respectively, confined indoors due to mobility limitations caused by the Uhthoff Syndrome.
92. As can be derived from this tailored scientific report and his personal account¹⁷⁹, the impacts of climate change in the Applicant's case amount to longer periods of forced isolation at home and increased dependence on external support. The adverse impacts of climate change are thus severe, devastatingly and disproportionately impacting the Applicant's ability to live normally, and to enjoy his right to private and family life.¹⁸⁰ The far-reaching physical and mental health impacts the Applicant suffers are neither representative of, nor comparable to those faced by the general population. The severity of these impacts justifies a pressing need to ensure the Applicant's individual protection through effective climate mitigation.
93. These direct adverse impacts cannot be adequately reduced through adaptation measures. In fact, the main adaptation measure currently available to the Applicant is to stay isolated in his passive house.¹⁸¹ This forced isolation prevents him from enjoying his right to private and family life, thereby infringing his right under Art 8. A cooling vest can only provide for some level of relief for a maximum time of

¹⁷⁷ Rieder et al (submitted as Doc 36 in the Annex), 10 (Figure 4) and 11 (Table 1).

¹⁷⁸ Rieder et al. (submitted as Doc 36 in the Annex), 10 (Figure 4) and 11 (Table 1).

¹⁷⁹ See the Applicant's second Personal Statement (submitted as Doc 32 in the Annex).

¹⁸⁰ *KlimaSeniorinnen* (n 1), para 519

¹⁸¹ A Passive House is a highly energy-efficient building standard that minimizes energy consumption for heating and cooling while maintaining a comfortable indoor climate.

about two hours.¹⁸²

94. Given the scientific future projections (see above para 85-87), the Applicant therefore stresses that adequate mitigation is the only sustainable option that would safeguard the continued enjoyment of his rights under Art 8.¹⁸³ It results therefrom that the adverse consequences of climate change on the Applicant's health, well-being and quality of life¹⁸⁴ are extremely significant already to this day.
95. In this context, it is important to remember that as a person with disabilities, the Applicant enjoys the protection of the Convention on the Rights of Persons with Disabilities ("**CRPD**"), whose importance has been recognized by this Court.¹⁸⁵ Art 19 CRPD provides for the right of "*living independently and being included in the community*" and recognizes the "*right of all persons with disabilities to live in the community*."¹⁸⁶ Forcing the Applicant to adapt to climate change by increased isolation from the outside world, is by no means compliant with Art 8 interpreted in the light of Art 19 CRPD.
96. Hence, it is of little relevance that the Applicant can "*resort to the health system, social security services and, last but not least, state funding for adaptation measures to reduce the effects of high outdoor temperatures to a tolerable degree*"¹⁸⁷ as the Respondent alleges. Whilst the Applicant is truly grateful for the State's support he receives as a result of his MS-diagnosis, social security services are by no means capable of sufficiently alleviating the harm the Applicant already suffers as a result of the adverse effects of climate

¹⁸² See the Applicant's second Personal Statement (submitted as Doc 32 in the Annex), para 2.

¹⁸³ The applicant would recall here the Court's earlier finding in *KlimaSeniorinnen* (n 1), para 436, that '*the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently*'.

¹⁸⁴ *KlimaSeniorinnen* (n 1), para 519.

¹⁸⁵ *Glor v Switzerland* App no 13444/04 (ECtHR, 30 April 2009), para 53; *Sykora v Czech Republic* App no 23419/07 (ECtHR, 22 November 2012), para 41.

¹⁸⁶ Art 19 Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

¹⁸⁷ Respondent Observations III. 3.2.4.

change, nor would they prevent its aggravation.

97. As per the guidance provided by the Court in *KlimaSeniorinnen*,¹⁸⁸ the Applicant submits that - in view of the specific vulnerability caused by his medical condition (Multiple Sclerosis coupled with the Uhthoff Syndrome) and the consequences resulting therefrom (see paras 72-92 above) – he is subject to a high intensity of exposure to the adverse effects of climate change and therefore qualifies as an actual victim for the purpose of Art 34.
98. The Applicant further notes that this exposure is only going to increase in view of the temperature warming projections forecasted globally, for Austria and for his region in the coming years, and so will his need for protection. The Applicant therefore also qualifies as potential victim owing to the high likelihood with which the risk of harm (resulting from increased warming) will materialize and adversely affect him.

III. The Applicant is within the Respondent's jurisdiction

99. Whether the Applicant falls within the Respondent's jurisdiction is not in dispute in this case. For the sake of completeness, the Applicant nevertheless reiterates that he is an Austrian national, residing in Austria and that all the claims he raises in the present case concern actions or omissions attributable to Austria, and which took place in its territory.

¹⁸⁸ *KlimaSeniorinnen* (n 1), para 527, referring to paras 487-488; see also para 531.

IV. Applicability and infringement of Art 6

1. Applicability of Art 6

1. Is the application admissible? In particular:

[...]

c. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 594-625)?

100. As noted by this Court in *KlimaSeniorinnen*, “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, Art 6 may be applicable.”¹⁸⁹

101. The Applicant’s claims under Art 6 arises as a result of the rejection of his constitutional challenge regarding the Respondent’s failure to end fossil fuel tax subsidies (AS, para 60). The Applicant therefore clarifies that applicability of Art 6 is only to be demonstrated with regards to the first limb of his Art 8 claim. On this basis, the Applicant submits that Art 6 § 1 is applicable. He will demonstrate that all three criteria for the applicability of Art 6 §1 are fulfilled:

- (i) The claim is based on a civil right recognized under domestic law (Sub-section 1.1);
- (ii) The dispute concerning this civil right is genuine and serious (Sub-section 1.2);

¹⁸⁹ *KlimaSeniorinnen* (n 1), para 609 with further references.

- (iii) The outcome of the proceedings brought before the Austrian Constitutional Court was directly decisive for the first limb of Applicant's Art 6 claim (Sub-section 1.3).

1.1. The Applicant's dispute concerns a civil right

102. In *KlimaSeniorinnen*, the Court recalled that “[w]hat matters is that the right is exercisable by the person in question and can be characterised as a ‘civil’ right.”¹⁹⁰ The classification of the right in question is not decisive as such.¹⁹¹

103. More concretely, in the context of climate change, the Court found that “a legally relevant relationship of causation may exist between State actions and/or omissions and the harm, or risk of harm, affecting individuals [resulting from adverse effects of climate change].”¹⁹² As such “Art 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.”¹⁹³

104. The Court further accepted that the right to protection of physical integrity under Art 8, in the context of a “complaint concerning effective implementation of the mitigation measures”,¹⁹⁴ constitutes “a right that is civil in nature for the purpose of the first limb of the test for the applicability of Art 6.”¹⁹⁵

105. Similarly to *KlimaSeniorinnen*, the right the Applicant sought to vindicate at the domestic level was his right to be protected from the adverse effects of climate

¹⁹⁰ Ibid, para 597.

¹⁹¹ Ibid, para 597.

¹⁹² *KlimaSeniorinnen* (n 1), para 610.

¹⁹³ Ibid, para 519.

¹⁹⁴ Ibid, para 616.

¹⁹⁵ Ibid, para 617: “As to the ‘civil’ nature of the right, the applicants relied, inter alia, on the right to life under Art 10 of the Swiss Constitution (see paragraph 121 above), which the Court has previously found to be a right from which not only the right to life but also the right to the protection of physical integrity can be derived (see *Balmer-Schafroth and Others*, cited above, paras 33-34). In accordance with the Court’s well-established case-law these are rights which are civil in nature for the purpose of the first limb of the test for the applicability of Art 6 (see paragraph 600 above).”

change, which includes the abrogation of climate-harmful measures. In the Austrian legal regime, the European Convention of Human Rights enjoys constitutional status.¹⁹⁶ In 1987, the Constitutional Court confirmed that this Court's case law is the primary source of interpretation of the Convention (see also OF section III. 1.1).¹⁹⁷

106. Therefore, any right (or obligation) derived from the Convention is recognized and applies in the Austrian legal system with the same legal strength as would any other constitutionally protected right. Since the issuance by this Court of the *KlimaSeniorinnen* judgment, the Applicant's civil right to have his private and family life protected from the adverse effects of climate change has thus crystalized in the Austrian legal system.¹⁹⁸ The findings equally apply and bind the Respondent today,

¹⁹⁶ VfSlg 11500/1987: “Der VfGH sieht sich zwar grundsätzlich gehalten, der MRK als Verfassungsnorm jenen Inhalt zu unterstellen, der ihr auch als internationalem Instrument zum Schutze der Menschenrechte und Grundfreiheiten zukommt. Er hat daher bei ihrer Auslegung insbesondere der Rechtsprechung des Europäischen Gerichtshofes als dem zur Auslegung der MRK zunächst berufenen Organ besonderes Gewicht einzuräumen.” [“The Constitutional Court does, in principle, consider itself obliged to ascribe to the ECHR the content that is also accorded to it as an international instrument for the protection of human rights and fundamental freedoms. It must therefore, in its interpretation, give particular weight to the case-law of the European Court of Human Rights as the body primarily called upon to interpret the ECHR.”]; see also Grabenwarter/Pabel, *Europäische Menschenrechtskonvention* (6th ed, C.H. Beck 2016) 120; Seeber, *Bedeutung der Judikatur des Europäischen Gerichtshofs für Menschenrechte in der Judikatur der österreichischen Höchstgerichte über den Fall hinaus* (Dissertation Karl-Franzens-Universität Graz 2015) 110: “Zweitens sind die Höchstgerichte verpflichtet, die Urteile des EGMR (auch solche, die gegen andere Staaten ergangen sind), als vorrangiges Auslegungsmittel für die Bestimmungen der EMRK heranzuziehen, also der Auslegung der EMRK durch den EGMR in seiner ständigen Judikatur zu folgen.” [„Secondly, the supreme courts are obliged to refer to the judgments of the ECtHR (including those handed down against other states) as the primary means of interpreting the provisions of the ECHR, i.e. to follow the interpretation of the ECHR by the ECtHR in its established case law“]; see Federal Law Gazette 59/1964; Öhlinger/Eberhard (n 63), para 7a; see also, e.g., VfSlg 4924/1965.

¹⁹⁷ See thereto generally, Christoph Grabenwarter, ‘§ 102. Der österreichische Verfassungsgerichtshof’ in Bogdandy/Huber (ed), *Handbuch Ius Publicum Europaeum* (C.F. Müller 2016) 123; Anna Katharina Struth, “‘Principled Resistance’ to ECtHR Judgements in Austria’ in Marten Breuer, *Principled Resistance to ECtHR Judgments - a New Paradigm?* (Springer, 2019) 89 ff; Katharina Pabel, ‘Rechtliche Implikationen der Völkerrechtsfreundlichkeit: Sonderfall EMRK und EGMR - Österreich’ (2023) 83 ZaöRV 827 ff; Seeber (n 196); Madner, ‘Climate Change as a Challenge’ (n 19), 355.

¹⁹⁸ Fuchs et al., ‘BMK Study Climate Lawsuits’ (n 2), 38 f.

irrespective of the fact that the Applicant's individual application predates this judgement.

107. Borrowing from the rationale underpinning the findings made by this Court in *Z and Others v. the United Kingdom* and *Károly Nagy v. Hungary*, the Applicant adds that the fact that the Constitutional Court did not rule upon the existence of such a right “does not retrospectively deprive [his] complaint of its arguability”.¹⁹⁹

108. For the reasons set out above, the Applicant respectfully invites this Court to recognize that his claim under Art 6 rests upon his right to protection of his private and family life from the adverse effects of climate change, and that this right constitutes a civil right within the meaning of Art 6.

1.2. The Applicant's dispute is genuine and serious

109. In *KlimaSeniorinnen*, the Court recalled that, “*in the environmental context, the Court has been prepared to accept that disputes concerning environmental matters were genuine and serious.*”²⁰⁰ The Applicant maintains that his dispute is concerning the “*scope and the manner of its exercise*”²⁰¹ of his right under Art 8 in the context of the climate crisis is “*genuine and serious.*”²⁰²

110. As an individual with a medical condition that heightens his vulnerability to the adverse effects of climate change, (see section paras 70-92) the Applicant has a pressing need for effective protection from these adverse effects. Arguably, and this is what is at stake here, this includes the abrogation of climate counter-effective measures which directly contradict the Respondent's primary duty “*to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change*”.²⁰³ Given the facts underpinning this

¹⁹⁹ *Z and Others v the United Kingdom* [GC] App no 29392/95 (ECtHR, 10 May 2001), para 89; *Károly Nagy v Hungary* [GC] App no 56665/09 (ECtHR 14 September 2017), para 63.

²⁰⁰ *KlimaSeniorinnen* (n 1), para 604.

²⁰¹ *Z and Others v the United Kingdom* (n 199), para 89; *Károly Nagy v Hungary* (n 199), para 63.

²⁰² *KlimaSeniorinnen* (n 1), para 595.

²⁰³ *Ibid*, para 545.

case,²⁰⁴ this dispute is genuine and serious.

111. Lastly, the Applicant emphasizes that the Constitutional Court recognized that the doctrine of indirect legal addressee could have, in principle, applied to his case. It thereby confirmed that his claim was not “*lacking in foundation*”.²⁰⁵

*“It must be conceded to the applicants that the Constitutional Court, depending on the purpose and content of the challenged provisions, has also considered legal entities not directly addressed by a provision to be the norm addressees if the provision not only affects their personal situation but also interferes with their legal sphere, which is particularly characterised by rights guaranteed by constitutional law (VfSlg. 19.892/201 4 et al). However, such an interference does not exist in the present case because, according to their statements, the applicants do not (want to) use the services of airlines for cross-border passenger transport services, but those of railway companies (see also VfSlg. 14.716/1996, 15.665/1999).”*²⁰⁶

112. **In light of the foregoing, the Applicant respectfully invites this Court to consider his dispute to be genuine and serious for the purpose of the applicability of Art 6.**

1.3. The outcome of the national proceeding was directly decisive

113. The Applicant maintains that the outcome of the national proceeding was also “*directly decisive*”²⁰⁷ for his right under Art 8.

114. It is this Court’s consistent case law that “[w]hether the result of the proceedings can be considered directly decisive for the right in question depends on the nature of the right relied on

²⁰⁴ Ibid, para 611.

²⁰⁵ *Rolf Gustafson v Sweden* App no 23196/94 (ECtHR, 1 July 1997), para 39; *Balakin v Russia* App no 21788/06 (ECtHR, 4 July 2013), para. 39.

²⁰⁶ VfGH 30 September 2020, G 144-145/2020-13, V 332/2020-13, para 68.

²⁰⁷ *KlimaSeniorinnen* (n 1), para 595, 605.

*as well as on the object of the proceedings in question.*²⁰⁸

115. In *KlimaSeniorinnen*, this Court noted that “[i]n 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.”²⁰⁹

116. Since the harms caused by climate change for the Applicant are “*real and highly probable*”,²¹⁰ they must have a bearing on the degree of decisiveness of the domestic proceeding. Especially since this Court interprets this criterion “*with a view to setting out criteria for victim status*”²¹¹ which the Applicant fulfils (see section II).

117. Further, this Court has recognized that climate litigation proceedings could be directly decisive when they “*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.*”²¹²

118. The Applicant’s challenge sought to remedy the failures by the Respondent to put an end to two climate-harmful measures. The existence of these measures constitutes an infringement to his right to protection against the adverse effects of climate change. As such, a repeal of these measures would have amounted to a “*corrective action*”²¹³ and therefore directly decisive for the Applicant’s right.

119. **In light of the foregoing, the Applicant has demonstrated that all three**

²⁰⁸ Ibid, para 605.

²⁰⁹ Ibid, para 613.

²¹⁰ Ibid

²¹¹ *KlimaSeniorinnen* (n 1), para 612 which reads in full: “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 (see, for instance, the approach in *Athanassoglou and Others*, cited above, para 59, and *Ivan Atanasov*, cited above, paras 78 and 93).”

²¹² *KlimaSeniorinnen* (n 1), para 614, 621.

²¹³ Ibid

criteria for the applicability of Art 6 § 1 are met. He therefore respectfully invites this Court to confirm that Art 6 § 1 is applicable to the present case.

2. Infringement of Art 6

2. To the extent that the complaints are admissible, has there been a violation of Articles 6, 8 and 13 of the Convention? In particular:

[...]

b. Did the applicant have access to a court for the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 626-640)? Did the manner in which the Constitutional Court applied Articles 139 and 140 of the Federal Constitution involve excessive formalism (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 80-86, 96-99, 5 April 2018, and *Dos Santos Calado and Others v. Portugal*, nos. 55997/14 and 3 others, §§ 111-117, 31 March 2020)?

120. The Applicant alleges that his right under Art 6 §1 is infringed (see also AS paragraph 60), owing to the excessive formalism with which the Constitutional Court addressed the question of his standing pursuant to Art 139/140 B-VG. He was thus denied access to a court for determining his right under Art 8.

121. As held by this Court “*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.*”²¹⁴ Hence, it encompasses disputes concerning the “*existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court*”²¹⁵ and may concern both “*questions of*

²¹⁴ *KlimaSeniorinnen* (n 1), para 629.

²¹⁵ *Case of Al-Adsani v The United Kingdom* App no 35763/97 (ECtHR, 21 November 2001), para 47.

fact and questions of law.”²¹⁶ The right to access to a court under Art 6 § 1 is “*not absolute but may be subject to limitations*”,²¹⁷ which are *inter alia* laid out in rules of procedural law. However, Art 6 § 1 ensures that procedural rules cannot obstruct an examination of a claim on its merits,²¹⁸ including in an appeal’s procedure.²¹⁹

122. In the present case, the Applicant maintains that the very formalistic interpretation of standing under Art 139/140 B-VG did not serve as “*a legitimate and reasonable procedural requirement having regard to the very essence of the supreme court’s role to deal only with matters of the requisite significance.*”²²⁰

123. The Applicant has summarized the Constitutional Court’s reasoning for refusing to grant him standing in OF, Section I. The Court’s misconstruction of his claim as a purely economic one and the overly formalistic approach to standing it adopted as a result, constituted “*a sort of barrier preventing the litigant from having [his] case determined on the merits by the competent court.*”²²¹

124. The vice-president of the Constitutional Court explained the court’s rationale for refusing to recognize the Applicant as an indirect addressee as follows (see also OF, section III, 1.2):

“The Austrian Constitutional Court has held that - depending on the purpose and content of the contested law - even individuals who are not directly addressed by a regulation may be regarded as being directly affected. This is the case if the regulation not only affects the personal (economic) situation of the applicants, but also interferes

²¹⁶ *Bentham v the Netherlands* App no 8848/80 (ECtHR, 23 October 1985), para 51 in fine; and *Albert and Le Compte v Belgium* App no 7299/75 (ECtHR, 10 February 1983), paras 29 in fine and 36, Series A no 58, 16 and 19.

²¹⁷ *Zubac v Coratia* App no 40160/12 (ECtHR, 5 April 2018), para 78.

²¹⁸ *Běleš and Others v The Czech Republic* App no 47273/99 (ECtHR, 12 November 2002), para 50.

²¹⁹ *Zubac* (n 217), para 97.

²²⁰ *Zubac* (n 217), para 83.

²²¹ *Zubac* (n 217), para 98, with references to *Kart v Turkey* [GC] App no 8917/05 (ECtHR, 3 December 2009), para 79 *in fine*; see also *Efstathiou and Others v Greece* App no 36998/02 (ECtHR, 27 July 2006), para 24 *in fine* and *Eşim v Turkey* App no 59601/09 (ECtHR, 17 September 2013), para 21.

*with their legal sphere. Fundamental rights may constitute a legal sphere in this respect. In the case at hand though, the Constitutional Court dismissed the claim due to a lack of standing. The main reason provided was that the applicants did not meet the criterion of affectedness. They were neither addressees of the relevant tax laws nor were they considered to be legally affected, not least because they claimed that they only travelled by train and did not make any use of the services of air carriers. A case brought by one of the claimants is currently pending in Strasbourg.*²²²

125. The Court’s approach “run[s] counter to the requirement of securing a practical and effective right of access to a court under Art 6 § 1 of the Convention”²²³ as this reasoning - explained in the above - prevented the court from applying its jurisprudence on indirect legal addressees (“*indirekte Normadressaten*”) and consequently addressing the Applicant’s claim under Art 8.²²⁴ The Applicant’s access to a court was therefore denied as a result of “[a] particularly strict construction of a procedural rule, preventing an applicant’s action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed.”²²⁵

126. Such strict construction would have not been possible had the Constitutional Court correctly interpreted the Applicant’s claim, namely as a fundamental right one, and not a purely economic one. The Applicant submits that the Court’s approach was therefore unforeseeable in light of its previous case law.²²⁶ Besides, the Applicant wishes to stress that the Court also disregarded his request for a preliminary ruling by the CJEU regarding the scope of Art 37 CFREU without any

²²² Madner, ‘Climate Change as a Challenge’ (n 19), 355.

²²³ Zubac (n 217), para 97.

²²⁴ Madner, ‘Climate Change as a Challenge’ (n 19), 355: “However, the Austrian Constitutional Court has held that - depending on the purpose and content of the contested law - even individuals who are not directly addressed by a regulation may be regarded as being directly affected. This is the case if the regulation not only affects the personal (economic) situation of the applicants, but also interferes with their legal sphere. Fundamental rights may constitute a legal sphere in this respect.”

²²⁵ Zubac (n 217), para 97.

²²⁶ VfSlg. 13.038/1992, 13.558/1993, 15305/1998, 19.349/2011, 19.892/2014, 20.541/2022; VfGH 29.04.2022, V35/2022; VfGH 29.06.2022, V324/2021; VfGH 13.06.2023, V161/2022.

reason,²²⁷ whereby further limiting his access to a court.

127. Lastly, the Applicant reminds that his case marked the first time the Constitutional Court had to consider a human rights-based climate challenge.²²⁸ The court's overly strict interpretation on standing therefore undermined the "*very essence of [its] role to deal only with matters of [...] requisite significance.*"²²⁹ It also undermined the "*key role*" it has to play as a domestic court in the context of climate-change litigation and "*importance of access to justice in this field*".²³⁰ Unfortunately, The Constitutional Court's strict interpretation of "*direct legal affectedness*" under Art 139/140 B-VG creates an "*insurmountable hurdle*"²³¹ for climate related claims,²³² which is also confirmed by the expert report for the Ministry for Climate Action.²³³

128. **To conclude, the Applicant respectfully submits that the Constitutional Court's overly "*excessively formalistic*"²³⁴ approach to standing denied a substantive review of his case, thereby infringing his right to access and effective judicial protection. Therefore, the Respondent must be found in**

²²⁷ See, e.g., *Ullens de Schooten and Rezabek v Belgium* App nos 3989/07 and 38353/07 (ECtHR, 20 September 2011), para 60: „Article 6 § 1 thus imposes, in this context, an obligation on domestic courts to give reasons, in the light of the applicable law, for any decisions in which they refuse to refer a preliminary question, especially where the applicable law allows for such a refusal only on an exceptional basis.”

²²⁸ VfSlg 20185/2017 concerning the third runway at Vienna Airport is a decision regarding an Environmental Impact Assessment and did not deal with any Human Rights implications.

²²⁹ *Zubac* (n 217), para 83.

²³⁰ *KlimaSeniorinnen* (n 1), para 638.

²³¹ Ennöckl, 'Klimaklagen Teil 2' (n 46), 191: „*Verlangt das nationale Verfahrensrecht (bzw seine Auslegung durch die Höchstgerichte) eine besondere unmittelbare oder individuelle Betroffenheit der Kl, um klimaschutzrelevante Rechtsakte bekämpfen zu können, so stellt dies für Klimaklagen eine so gut wie nicht zu überwindende Hürde dar:*“[„If national procedural law (or its interpretation by the highest courts) requires the plaintiff to be directly or individually affected in order to be able to challenge legal acts relevant to climate protection, this represents an almost insurmountable hurdle for climate lawsuits.“].

²³² *Ibid.*

²³³ Fuchs et al., 'BMK Study Climate Lawsuits' (n 2), 32.

²³⁴ *Zubac* (n 217), paras 80-86 and 96-99.

breach of its obligation under Art 6.

V. Applicability and infringement of Art 13

2. To the extent that the complaints are admissible, has there been a violation of Articles 6, 8 and 13 of the Convention? In particular:

[...]

c. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention?

1. Applicability of Art 13

129. The Applicant maintains that the Respondent has failed to provide “*a domestic remedy to deal with the substance*” of his “*arguable complaint*” under Art 8 and capable of granting him “*appropriate relief*”²³⁵ (see also AS, paras 51-56). His Art 13 claim must therefore be assessed in conjunction with the second limb of his Art 8 claim (see para 3).

130. Art 13 gives “*direct expression to the States’ obligation to protect human rights first and foremost within their own legal system.*”²³⁶ For Art 13 to be applicable, the applicant must successfully demonstrate that he has an “*arguable complaint*” under the Convention²³⁷ which he submitted to the domestic courts.²³⁸

131. In the context of climate change-related claims, the Court has put strong emphasis on the applicant’s victim status when assessing the arguability of claim

²³⁵ *Kudła v Poland* [GC] App no 30210/96 (ECtHR, 26 October 2000), para 147; *Zavoloka v Latvia* App no 58447/00 (ECtHR, 07 July 2009), para 35(a).

²³⁶ *Kudła v Poland* (n 235), para 152.

²³⁷ *Zavoloka v Latvia* (n x), para 35(a).

²³⁸ *Sürmeli v Germany* [GC] App no 78829/01 (ECtHR, 08 June 2006), para 98.

under Art 8 in conjunction with Art 13. In *KlimaSeniorinnen*, the Court found that the individual applicants had no arguable claim for the purpose of Art 13,²³⁹ given that they were found not to meet the criteria for victim status in the climate-change context.²⁴⁰

132. Contrary thereto, the Applicant has convincingly demonstrated to be “*subject to a high intensity of exposure to the adverse effects of climate change*” and the “*pressing need to ensure [his] individual protection*” resulting therefrom.²⁴¹ Accordingly, he is both a direct but also potential victim of the Respondent’s failures to fulfil its Art 8 obligations (see Section II). The Respondent does not contest that the Applicant’s Uhthoff Syndrome, which gives rise to his temperature sensitivity.²⁴²

133. As explained in para 3 (hence in the very beginning of the OL), the Applicant challenged the Respondent’s failures to meet its positive obligations under Art 8 and the two limbs of his claim arising as a result. The second limb of his claim concerns the Respondent’s omission to implement an adequate climate regulatory framework as set out in para 550 of *KlimaSeniorinnen*. As demonstrated in full details at paras 20 *et seq*, the Applicant currently has no effective remedy to address this omission. In his Individual Application submitted to the Constitutional Court, he duly raised the absence of such an effective remedy.²⁴³

134. **Based on the foregoing, the Applicant respectfully invites this Court to find that he has an arguable claim under Art 8 regarding the Respondent’s omission to adopt an adequate climate framework, and that therefore Art 13 is applicable in the present case.**

²³⁹ *KlimaSeniorinnen* (n 1), para 645.

²⁴⁰ *Ibid*, paras 527-535.

²⁴¹ *Ibid*, para 487.

²⁴² Respondent Observations III. 3.2.4.

²⁴³ Individual Application section 9.2 (submitted as Doc 20 & 20b in the Annex).

2. Infringement of Art 13

135. To this date, no domestic remedy in the Austrian legal system enables individuals to effectively address the Respondent's failure to adopt an adequate climate framework in line with the 1.5°C-limit. The Applicant further emphasises that his right to effective protection from adverse effects of climate change under Art 8 is thus "*less effective if there exists no opportunity to submit the Convention claim first to a national authority.*"²⁴⁴

136. As already laid out in paras 20 *et seq*, the lack of an effective remedy to challenge the Respondent's omission to adopt an adequate climate framework results in procedural gaps that prevent the Applicant from raising a complaint about this omission.²⁴⁵ Hence, the Applicant's situation is such that:

*"For affected individuals, [...] it remains the case that there are still hardly any possibilities to obtain legal protection against delayed climate protection legislation. Irrespective of the question of the scope of application of Art 6 ECHR dealt with by the ECtHR, doubts therefore remain as to the conformity of the current legal situation with Art 13 ECHR insofar as, on the one hand, an interference with fundamental rights (specifically e.g. pursuant to Art 8 ECHR) can be affirmed in principle, but, on the other hand, an effective legal remedy may be lacking."*²⁴⁶

²⁴⁴ *Kudła v Poland* (n 235), para 142.

²⁴⁵ *Ennöckl/Handig/Polzer/Vouk* (n 123), 631.

²⁴⁶ Fuchs et al., 'BMK Study Climate Lawsuits' (n 2), 42: "*Für betroffene Einzelpersonen bleibt es jedoch [...] generell dabei, dass kaum Möglichkeiten offenstehen, um Rechtsschutz gegen eine säumige Klimaschutzgesetzgebung zu erlangen. Unabhängig von der durch den EGMR behandelten Frage des Anwendungsbereichs von Art 6 EMRK bleiben daher Zweifel an der Konformität der gegenwärtigen Rechtslage mit Art 13 EMRK insoweit bestehen, als zur einen Seite zwar ein Grundrechtseingriff (konkret zB gemäß Art 8 EMRK) grundsätzlich bejaht werden kann, zur anderen Seite aber ein wirksamer Rechtsbehelf möglicherweise fehlt.*" But also page 21: "*In the light of this, a (too) narrow access to justice is criticized in academia, and it is particularly pointed out that the high barriers to access to judicial review by the Constitutional Court, which are all the more apparent in the context of inadequate climate protection legislation, come into conflict with the right to an effective remedy under Art. 13 ECHR.*" [*"In der Lehre wird im Lichte dessen ein (zu) enger*

137. The limits to the Constitutional Court’s jurisdiction to address the legislator’s omissions in the context of fundamental right protection was already stressed in 2008:²⁴⁷

“Although the Constitutional Court can only ever either repeal or not repeal statutory provisions [...], legal and constitutional policy trends are moving in the direction of an extended jurisdiction of the Constitutional Court that also includes the legislator’s omission. The problem described above arises in a special way, particularly in connection with the discussed creation of ‘social’ fundamental rights [...]. When creating social rights, it will in most cases be unavoidable to give the legislature the duty to implement certain constitutional programmatic principles. If this happens, it will undoubtedly be necessary to consider creating a competence of the Constitutional Court to determine whether and in which way the legislator has failed to implement such a constitutional principle. It is to be expected that a corresponding constitutional regulation will be submitted to parliament by the federal government as a government bill in the course of next year.”²⁴⁸ [emphasis added]

138. To this date, no such reform has taken place. As already demonstrated at paras 45 *et seq* above, and in line with this Court’s finding in *Chiragov and Others v. Armenia*,

access to justice moniert sowie insbesondere zu bedenken gegeben, dass die hohen Zugangshürden zur Gesetzesprüfung durch den VfGH, die im Kontext unzureichender Klimaschutzgesetzgebung umso deutlicher hervortreten, in eine Spannungslage mit dem Recht auf wirksame Beschwerde gemäß Art 13 EMRK geraten.”]

²⁴⁷ Oberndorfer/Wagner (n 65), 29.

²⁴⁸ Oberndorfer/Wagner (n 65), 29: “Wenn der Verfassungsgerichtshof gesetzliche Bestimmungen immer nur entweder aufheben oder nicht aufheben kann [...], so bewegen sich doch die rechts- und verfassungspolitischen Trends in die Richtung einer erweiterten, auch das Unterlassen des Gesetzgebers umfassenden Zuständigkeit des VfGH. Vor allem im Zusammenhang mit der zur Diskussion stehenden Schaffung von ‘sozialen’ Grundrechten [...] ergibt sich die vorhin dargestellte Problematik in einer besonderen Weise. Bei der Schaffung sozialer Grundrechte wird es in den meisten Fällen unvermeidlich sein, dem einfachen Gesetzgeber den Auftrag zu erteilen, bestimmte verfassungsrechtliche Programmsätze auszuführen. Wenn dies geschieht, wird zweifellos an die Schaffung einer Kompetenz des Verfassungsgerichtshofes zur Feststellung zu denken sein, ob und in Gestalt welcher Regelungskomplexe der einfache Gesetzgeber einen solchen verfassungsrechtlichen Programmsatz nicht ausgeführt hat. Es ist zu erwarten, dass eine entsprechende verfassungsrechtliche Regelung im Lauf des nächsten Jahres von der Bundesregierung als Regierungsvorlage dem Parlament zugeleitet werden wird.”

the Applicant contends that the Respondent therefore “*failed to discharge the burden of proving the availability to [Applicant] of a remedy capable of providing redress in respect of [his] Convention complaints and offering reasonable prospects of success*”²⁴⁹ and that this constitutes a breach of Applicant’s right under Art 13.

139. **To conclude, the Applicant respectfully invites this Court to find that he has no domestic remedy available to enforce his right to protection against the adverse effects of climate change under Art 8, and that the Respondent thus infringes the Applicant’s right under Art 13 in conjunction with Art 8, on the ground that it fails “*to secure and implement an appropriate legal framework*”²⁵⁰ capable of addressing this omission.**

VI. Applicability and infringement of Art 8

2. To the extent that the complaints are admissible, has there been a violation of Articles 6, 8 and 13 of the Convention? In particular:

[...]

a. Has there been an interference with the applicant’s right to respect for his private and family life or home, within the meaning of Art 8 § 1 of the Convention?

Did the respondent State fail to comply with its positive obligations to effectively protect the applicant’s respect for his private and family life, including his home (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 538-574)?

140. In *KlimaSeniorinnen*, the Court established principles defining the scope and

²⁴⁹ *Chiragov and Others v Armenia* [GC] App no 13216/05 (ECtHR, 16 June 2015), paras 213-215.

²⁵⁰ *KlimaSeniorinnen* (n 1), para 519

application of Art 8 of the Convention in the context of climate change. It conducted a comprehensive assessment of climate-related issues under the Convention. The Applicant considers these findings fully applicable to this case and will not restate them unless required by the arguments presented. They also fully complement his observations made in his Application to this Court under AS, paras 9-31, 33-50.

141. This section will:

- (iv) Demonstrate the applicability of Art 8 to the present case (**Section 1**).
- (v) Show that the Respondent failed to comply with its positive obligations under Art 8 as set out by this Court in *KlimaSeniorinnen* and thereby infringes the Applicant's right to protection from adverse effects of climate change (**Section 2**).

1. Applicability of Art 8

142. In *KlimaSeniorinnen*, this Court has recognized the right for an individual to be protected against the adverse effects of climate change.²⁵¹ Whether criteria for victim status are fulfilled depends on “*on a careful assessment of the concrete circumstances of the case*”.²⁵² Applicability of Art 8 is closely intertwined with the assessment of the Applicant's victim status. The Applicant therefore refers the Court to (section II), in which he demonstrates his satisfaction of the victim status criteria under Art 34.

143. In summary, the Applicant qualifies for victim status due to the Uhthoff Syndrome he suffers from, which worsens the symptoms of his MS-disease with rising temperatures. His exacerbated vulnerability to warm days and heatwaves, which have increased over recent years, make him already subject to “*a high intensity*

²⁵¹ *KlimaSeniorinnen* (n 1), para 519. See also para 544: “[T]he Court derives from Article 8 a right for individuals to enjoy effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change.”.

²⁵² *KlimaSeniorinnen* (n 1), para 488.

of exposure to the adverse effects of climate change”²⁵³ and will be significantly worse if the 1.5°C-limit cannot be adhered to. (see paras 85 *et seq*; AS paras 11-13) As such, the Applicant has a “*pressing need*”²⁵⁴ for protection heightened by the fact that there is - as the Applicant will show - no adequate regulatory framework to mitigate the adverse effects of climate change in place in Austria.

144. Taking into account the Applicant’s satisfaction of the victim status criteria set out by this Court in *KlimaSeniorinnen*,²⁵⁵ and the “*close link between victim status and the applicability of [Art 8]*”,²⁵⁶ the Applicant respectfully submits that Art 8 is applicable to the present case.

2. Infringement of Art 8

145. In this section, the Applicant will show that Austria has violated Art 8 of the Convention. He will do so by first rebutting the Respondent’s invocation of the *Bosphorus presumption* and showing that Austria must itself show that it has upheld its obligations under the Convention (paras 146 *et seq*). He will then address how Austria falls short of fulfilling the positive obligations required under Art 8 of the Convention (paras 197 *et seq*).

2.1. Rebutting the Respondent: EU commitments do not absolve the Respondent from fulfilling its positive obligations under the Convention

146. In its Observations, the Respondent claims that it complies with its positive obligations under Art 8²⁵⁷ as “*Austria has taken exactly such measures [as required by the Court in *KlimaSeniorinnen*] in the EU context*”²⁵⁸ on the basis of a “*binding legal framework [...] which puts Austria under an obligation to take measures in order to reduce greenhouse gas*

²⁵³ *KlimaSeniorinnen* (n 1), para 487a.

²⁵⁴ *Ibid*, para 487b.

²⁵⁵ *Ibid*, para 487.

²⁵⁶ *Ibid*, para 459.

²⁵⁷ Respondent Observations III.4.1.4 - 4.1.5.

²⁵⁸ Respondent Observations III.4.1.6.

*emissions”.*²⁵⁹ Also it claims that it “*has taken a number of ambitious measures in order to both comply with the requirements of EU law and to put various other environmental measures into action.*”²⁶⁰

147. Throughout its Observations, the Respondent repeatedly argues compliance with Art 8 based on its alleged compliance with EU climate commitments.²⁶¹ It claims that the targets and measures set at the EU level ensure an equivalent level of human rights protection, giving rise to the application of “*the presumption of equivalent protection*”, developed by this Court in the *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*⁶² case (hereinafter “**Bosphorus presumption**”), and that the EU’s climate actions meet the requirements of the obligations under the Convention.

148. The Applicant will now proceed to demonstrate that compliance with EU climate commitments does not absolve the Respondent from fulfilling the Convention obligations it owes to the Applicant. Even if the Respondent fully complies with its obligations under EU law, it must still demonstrate that it has satisfied its obligations under Art 8 of the Convention.

149. The Applicant will submit the following:

- 1) The rationale for the *Bosphorus* presumption does not apply in this case (paras 150 *et seq*);
- 2) The criteria for the applicability of the *Bosphorus* presumption relating to (i) the absence of discretion and (ii) equivalent protection are not met (paras 160 *et seq*); and
- 3) Even if it were applicable, the *Bosphorus* presumption is rebutted on the facts

²⁵⁹ Respondent Observations III.4.1.7.1.

²⁶⁰ Respondent Observations II.7.1.

²⁶¹ Respondent Observations III.4.1.7.

²⁶² *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* App no 45036/98 (ECHR, 30 June 2005).

of the case (paras 192 *et seq*).

a) The rationale of the *Bosphorus* presumption does not apply in this case

150. At the outset, the Respondent's arguments must be weighed against the rationale behind the *Bosphorus* presumption, which is to “*ensure that a State Party is not faced with a dilemma when it is obliged to rely on the legal obligations incumbent on it as a result of its membership of an international organization*”²⁶³ (emphasis added). The Court developed the presumption to resolve potentially conflicting obligations for States under the Convention on the one hand, and obligations incumbent on these States as a result of their membership in international organisations on the other.

151. This rationale does not apply to the Applicant's case. The *Bosphorus* presumption cannot be applicable for the simple reason that there is no conflict between the Respondent's climate-related obligations under EU law (“**EU climate law**”) and the obligations it must fulfil pursuant to the framework set out by this Court in *KlimaSeniorinnen* under Art 8.

152. EU climate law amounts to a minimum harmonisation which is not at all intended to cover the full scope of Member States' climate and human rights obligations. In particular, unlike the obligations stemming from Art 8, EU climate law is not concerned with the protection of individual's fundamental rights. EU law does not intend to exhaustively regulate this area, but rather complement the human rights obligations set out under the Convention.²⁶⁴

153. Consequently, the obligations stemming from EU law regarding climate protection do not conflict with the Respondent's positive obligations under Art 8 in the context of climate change. The Respondent must take additional climate mitigation measures to comply with its obligations under the Convention, a prerogative available to all EU member States, as expressly established by EU law.

²⁶³ *Michaud v France* App no 12323/11 (ECHR, 6 March 2013), para 104.

²⁶⁴ European Commission, Written Observations before the European Court of Human Rights, *Duarte Agostinho and Others v Portugal and Others* (Application 39371/20) at para 21.

Art 4(2) of the Treaty on the Functioning of the EU (“**TFEU**”) clearly sets out that environmental matters are a shared competence between the EU and Member States. Art 193 of the TFEU further states that environmental measures adopted by the EU “*shall not prevent any Member State from maintaining or introducing more stringent protective measures.*”

154. Both EU primary²⁶⁵ and secondary law – including the European Climate Law (“**ECL**”)²⁶⁶ and the European Effort Sharing Regulation (“**ESR**”)²⁶⁷ – establish a minimum harmonization framework across Member States, with the goal of collectively addressing climate change action. For example, Art 1 of the updated ESR entitled “*Subject matter*” clearly states:

“This Regulation lays down obligations on Member States with respect to their minimum contributions for the period from 2021 to 2030 to fulfilling the Union’s target of reducing its greenhouse gas emissions by 40 % below 2005 levels in 2030 (...). This Regulation also lays down rules on determining annual emission allocations and for the evaluation of Member States’ progress towards meeting their minimum contributions” (emphasis added).²⁶⁸

155. Also, the European Climate Law provides for two minimum EU-wide GHG emissions reduction targets, namely an intermediate target of at least 55% GHG-

²⁶⁵ Article 192(1) TFEU refers to the objectives in Article 191 TFEU, which include, in paragraph 1, ‘*promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change*’. As clearly stipulated in Article 193 TFEU ‘*The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures.*’

²⁶⁶ Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 (European Climate Law Regulation) [2021] OJ L243/1.

²⁶⁷ Regulation (EU) 2023/857 of the European Parliament and of the Council of amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and Regulation (EU) 2018/1999 (ESR) [2023] OJ L111/1.

²⁶⁸ Ibid. This is further substantiated by Article 32 of the initial legal act of the updated ESR (Regulation (EU) 2018/842) stating that: “*This Regulation is without prejudice to more stringent national objectives*”.

reduction by 2030, and climate neutrality by 2050 at the latest.²⁶⁹ It is illustrative that, by 2009, the EU had already implemented a GHG emissions reduction framework, based on the clear understanding that Member States can adopt stricter and more ambitious measures.²⁷⁰

156. Thus, some Member States have set more ambitious targets than these collective minimum requirements.²⁷¹ The Respondent itself seems to share this understanding, as it proclaimed a – non-binding – aspirational target to achieve carbon neutrality in 2040.²⁷²

157. Along these lines, in the third-party intervention submitted before this Court in the case *Duarte Agostinho* (which the Respondent notably annexed to its Observations) the European Commission itself recalled this principle, stating that:

“In order to achieve the objectives indicated in the NDCs of the EU and its Member

²⁶⁹ Article 1 European Climate Law.

²⁷⁰ Decision 406/2009/EC of the European Parliament and of the Council of on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020 [2009] OJ L140/136, para 17: *‘This Decision should be without prejudice to more stringent national objectives.’*

²⁷¹ Notably, some Member States have set more stringent climate neutrality targets, such as Finland (2035), Germany (2045) and Sweden (2045). See Rasmussen, ‘Denmark on track to hit 2030 emissions cuts goal, council says’ (*Reuters*, 27 February 2025) <[https://www.reuters.com/sustainability/climate-energy/denmark-track-hit-2030-emissions-cuts-goal-council-says-2025-02-27/#:~:text=COPENHAGEN%2C%20Feb%2027%20\(Reuters\),appointed%20council%20said%20on%20Thursday.>](https://www.reuters.com/sustainability/climate-energy/denmark-track-hit-2030-emissions-cuts-goal-council-says-2025-02-27/#:~:text=COPENHAGEN%2C%20Feb%2027%20(Reuters),appointed%20council%20said%20on%20Thursday.>) accessed 1 March 2025; Appunn/Wettengel, ‘Germany’s Climate Action Law, Clean Energy Wire’ (*Clean Energy Wire*, 13 January 2025) <<https://www.cleanenergywire.org/factsheets/germanys-climate-action-law-begins-take-shape>>

accessed 1 March 2025; ‘Sweden’s Climate Act and Climate Policy Framework’ (*Naturvårdsverket*) <<https://www.naturvardsverket.se/en/topics/climate-transition/sveriges-klimatarbete/swedens-climate-act-and-climate-policy-framework/>> accessed 1 March 2025.

²⁷² Respondent Observations II. 7.1. Austria’s 2040 climate neutrality target was initially presented as an economy-wide target, thus being much more ambitious than the EU’s own 2050 climate neutrality target, but it later specified in its last NECP (December 2024), that this target was in fact only applicable to the ESR sector. It thus no longer more ambitious than the EU’s one.

States, the EU sets Union-wide binding targets for climate and energy that all Member States have to comply with and achieve through national implementation. At the same time, nothing precludes Member States from adopting even more ambitious GHG emissions reduction targets at national level’ (emphasis added).²⁷³

158. Consequently, the Respondent can – and must – comply with two separate and complementary sets of obligations when it comes to mitigating the adverse effects of climate change. On the one hand, it must satisfy to its EU climate law obligations, which constitute minimum climate mitigation targets. On the other hand, it must adopt and implement a climate mitigation regulatory framework which reflects the one set out by this Court in para 550 of *KlimaSeniorinnen*. There is no conflict between these two sets of obligations which in fact complement each other.

159. Similarly to what the Court held in *Al-Dulimi and Montana Management Inc. v Switzerland*, this absence of normative conflict in the present case “renders nugatory the question whether the equivalent-protection test should be applied.”²⁷⁴ As a result, the rationale of the *Bosphorus* presumption does not apply in the present case, and the Respondent cannot claim compliance with its Art 8 positive obligations solely by asserting compliance with EU climate law obligations.

b) In any case, the *Bosphorus* presumption is not applicable

160. Should the Court nevertheless find it appropriate to assess the applicability of the *Bosphorus* presumption to the present case, the Applicant will demonstrate that its applicability criteria are not met.

161. These criteria are two-fold: (1) the State must have no discretion in fulfilling its

²⁷³ European Commission, Written Observations before the European Court of Human Rights, *Duarte Agostinho and Others v Portugal and Others* (Application 39371/20), para 21.

²⁷⁴ *Al-Dulimi and Montana Management Inc. v Switzerland* App no 5809/08 (ECHR, 21 June 2016), para 149.

obligations flowing from its membership of an international organization; and (2) the protection resulting from these obligations must be equivalent to the level of protection granted under the Convention.²⁷⁵ Only when these two cumulative conditions are fulfilled, “*the presumption [...] that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation*”²⁷⁶ effectively applies.

162. In the below paragraphs, the Applicant will rely on a number of EU law documents and policies summarized in the Facts section (see OF, section III, 3) which show that the protection granted under EU climate law cannot be considered equivalent to the one granted under the Convention and that therefore the *Bosphorus* presumption does not apply. The Applicant will confine his discussion to those parts relevant to the applicability of the *Bosphorus* presumption.

(1) First applicability criterion: The Respondent has discretion to set more stringent climate targets and measures

163. In the present case, the Respondent’s position is that it is “*an EU Member State and therefore subject to the [EU] legal framework*”, and that the “*EU has imposed binding annual targets on its Member States to reduce greenhouse gas emissions since 2013 until 2030. In this context, Austria has no margin of appreciation* .”²⁷⁷

164. This position is incorrect. As shown in great detail, the Respondent has room to exercise discretion under EU climate law (as set out in paras 0 *et seq*, above). Therefore, the first criterion for the applicability of the *Bosphorus* presumption is not met in this case. The Applicant points to the fact the *Bosphorus* presumption was only applied in cases in which states were left with no discretion in the

²⁷⁵ *Bosphorus* (n 262), paras 160-165; *Michaud* (n 263), paras 102-104; *Avotins v Latvia* App no 17502/07 (ECHR, 23 May 2016), para 101.

²⁷⁶ *Bosphorus* (n 262), para 156.

²⁷⁷ Respondents Observations III.2.3.1.

implementation of EU law.²⁷⁸ The Court phrased this as “*the absence of any margin of manoeuvre on the part of the national authorities*”,²⁷⁹ with the State doing “*no more than implement the legal obligations flowing from [its] membership of the European Union, without exercising any discretion*”.²⁸⁰

165. The Applicant will show that the situation in his case is comparable to the one in *M.S.S. v Belgium and Greece*. In that case, the Court held that the *Bosphorus* presumption was inapplicable because Belgium had discretion to grant a higher level of human rights protection than required by the Dublin Regulation.²⁸¹ It is illustrative in the present context that several Member States have not hesitated to adopt more ambitious economy-wide climate targets than the ones they were assigned to under the ESR. Denmark, Finland, Germany and Sweden are examples thereof.²⁸² The fact that a number of Member States have set national targets and taken policy measures exceeding what is required of them under EU law demonstrate that the EU Member States have a margin of manoeuvre when

²⁷⁸ *Bosphorus* (n 262), paras 145-146; *Coopérative des agriculteurs de la Mayenne and Coopérative laitière Maine-Anjou v France* App no 16931/04 (ECHR, 10 October 2006); *Porse v Austria* App no 3890/11 (ECHR, 18 January 2011), para 79; *Avotiņš* (n 275), para 106.

²⁷⁹ *Avotiņš* (n 275), para 105.

²⁸⁰ *Porse* (n 278), para 78.

²⁸¹ *M.S.S. v Belgium and Greece* (n 34), paras 339-340.

²⁸² See for instance: as of February 2025, Denmark has an economy-wide emissions reduction target of 70% by 2030 compared to 1990 levels (Rasmussen, ‘Denmark on track to hit 2030 emissions cuts goal, council says’ [*Reuters*, 27 February 2025] <[https://www.reuters.com/sustainability/climate-energy/denmark-track-hit-2030-emissions-cuts-goal-council-says-2025-02-27/#:~:text=COPENHAGEN%2C%20Feb%2027%20\(Reuters\),appointed%20council%20said%20on%20Thursday.>](https://www.reuters.com/sustainability/climate-energy/denmark-track-hit-2030-emissions-cuts-goal-council-says-2025-02-27/#:~:text=COPENHAGEN%2C%20Feb%2027%20(Reuters),appointed%20council%20said%20on%20Thursday.>) accessed 1 March 2025); Germany has an economy-wide emissions reduction target of 65% by 2030 compared to 1990 levels (Appunn/Wettengel, ‘Germany’s Climate Action Law, Clean Energy Wire’ [*Clean Energy Wire*, 13 January 2025] <<https://www.cleanenergywire.org/factsheets/germanys-climate-action-law-begins-take-shape>> accessed 1 March 2025); Sweden has an economy-wide emissions reduction target of 63% by 2030 compared to 1990 levels (‘Sweden’s Climate Act and Climate Policy Framework’ [*Naturvårdsverket*] <<https://www.naturvardsverket.se/en/topics/climate-transition/sveriges-klimatarbete/swedens-climate-act-and-climate-policy-framework/>> accessed 1 March 2025).

implementing their EU climate law obligations. The Respondent is therefore precluded from arguing that it “*has no margin of appreciation*”²⁸³ when implementing these obligations.

166. It should also be noted that several European domestic courts, including two last instance courts (Netherlands, Germany), and a Court of Appeal (Belgium) have held that mere compliance with EU climate law is not sufficient to absolve States from their duty to protect human rights and fundamental freedoms from the impacts of climate change.²⁸⁴ It is not the intention of EU climate law to replace the human rights regime of the Convention.

167. **In light of the above, the Applicant concludes that the Respondent does have discretion under the applicable EU climate law framework. The first applicability criterion of the *Bosphorus* presumption is therefore not met and the presumption does not apply.**

(2) Second applicability criterion: The Applicant’s protection under EU law is not equivalent

168. For the sake of completeness, the Applicant will proceed to the second

²⁸³ Respondent Observations II.6.2.

²⁸⁴ *Stichting Urgenda v The Netherlands (Ministry of Economic Affairs and Climate Policy)* [2019] Dutch Supreme Court, ECLI:NL:HR:2019:2007, para 7.3.3: ‘*The purport of the State’s reference to the agreements at EU level as mentioned in 7.3.1 above is not that such an agreement was reached at EU level. The State refers to those agreements only because, in its view, they are only standards that oblige it to achieve a certain concrete reduction in greenhouse gas emissions. However, this argument fails to recognise that [...] the State may also be obliged to make such a reduction on the basis of Articles 2 and 8 ECHR*’; Neubauer (n 59), para 141: ‘*The Federal Climate Change Act’s background in EU law does not rule out the admissibility of the constitutional complaints.*’; *VZW Klimaatzaak v Belgium and Others* [2023] Court of Appeals of Brussels, para 161: ‘*Nor can the fact that there is a binding framework at European Union level allow the Belgian State and the Regions to hide behind the provisions it sets out: indeed, these are minimum requirements, and it cannot in theory be ruled out that the ECHR would impose more ambitious GHG reductions. It is therefore not correct to assert that the Belgian State’s mere compliance with the obligations imposed on it by the European Union would lead to the conclusion that Articles 2 and 8 of the ECHR have been complied with [...]. For the same reasons, no conclusion can be drawn from the fact that no action for failure to fulfil obligations has been brought against the Belgian State by the European Commission.*’

criterion of equivalent protection. He will demonstrate that neither the (i) substantive, nor the (ii) procedural aspects of protection provided by EU climate law are equivalent to the protection owed to him under Art 8 of the Convention.

169. The Applicant submits that in order for the Court to assess whether EU law guarantees “equivalent protection”²⁸⁵, it must compare the protection granted under EU law to the protection level provided by the Convention as set out in *KlimaSeniorinnen*. The exact obligations imposed on States in that context are set out further below, in paras 2.2 *et seq* relating to the breach of Art 8 of the Convention by the Respondent. For the purposes of showing that the EU climate law regime is entirely different and therefore does not grant equivalent protection, the Applicant will confine his argument to highlighting a number of shortcomings with reference to relevant considerations in *KlimaSeniorinnen*.

170. As a preliminary remark, the Applicant notes that in the climate change context, the mere existence of the Charter of Fundamental Rights of the EU ought not to be taken, in and of itself, as a guarantee for an equivalent protection of human rights to the one granted under the Convention. The Convention ensures substantive human rights protection in the context of climate change through a regulatory framework specifically designed to mitigate climate change and not by a human rights catalogue alone. Additionally, the effectiveness of the EU’s human rights framework is hindered by restricted access to justice for individuals, such as the Applicant.

(i) The EU’s substantive protection is not equivalent

171. The Applicant will show that EU law provides a different substantive protection than Art 8 of the Convention. This can be demonstrated using findings from the EU’s own scientific advisory body which show that EU commitments fall short of meeting the obligations defined by the Court in para 550 of *KlimaSeniorinnen*.

²⁸⁵ *Bosphorus* (n 262), paras 160-165; *Michaud* (n 263), paras 102-104; *Avotiņš* (n 275), para 101.

172. As further elaborated upon under paras 198 *et. seq.*, the Court in *KlimaSeniorinnen* held that in order to guarantee the right for individuals to effective protection from the adverse effects of climate change on their life, health, well-being and quality of life, States must adhere to regulatory obligations which is set out in para 550 that include, *inter alia*, to “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” (emphasis added).²⁸⁶

173. The Court further clarified that a regulatory framework combating climate change cannot be effective “*without quantifying, through a carbon budget or otherwise, national GHG emissions limitations*”.²⁸⁷ With regards to the obligation to specify an overall remaining carbon budget or equivalent, the Court concluded in paras 569-571 of the *KlimaSeniorinnen* that it was possible to determine a national carbon budget based *inter alia* on the principle of CBDR-RC, and that “*thus, [...] Switzerland allowed for more GHG emissions than even an ‘equal per capita emissions’ quantification approach would entitle it to use*”.²⁸⁸

174. There are several reasons why the Respondent’s obligations under the EU minimum framework are not fully in line with the regulatory obligations as set out by the Court.

175. First, the EU’s collective minimum targets, the 2030 target of minus 55% compared to 1990 levels and the 2050 net-zero target, are not based on a quantification of a carbon budget. A 2020 European Commission impact assessment reflects this lack of a carbon budget quantification during the process aimed at adopting the EU’s existing climate targets.²⁸⁹ The Commission disclosed

²⁸⁶ *KlimaSeniorinnen* (n 1), para 550a.

²⁸⁷ *Ibid*, paras 570 and 573.

²⁸⁸ *Ibid*, para 569.

²⁸⁹ European Commission, ‘Commission Staff Working Document Impact Assessment Accompanying the document Communication to the European Parliament, the Council, the European Economic and

that the EU-wide mitigation target 2030 was shaped by a “*political mandate*”; that the Commission had only considered mitigation targets that could “*be achieved in a responsible manner*” through the lens of the “*negative social and economic impacts associated with the transition*”; and that, as such, any EU-wide mitigation scenario going beyond a 55% reduction goal was not assessed at all.²⁹⁰

176. Second, the economy-wide targets for 2030 and 2050 do not contain any type of economy-wide limitation or quantification of the Respondent’s domestic GHG emissions. As the Court held in *KlimaSeniorinnen*, setting reduction targets does not equate to quantifying a budget - and defining the limitations on cumulative GHG emissions is the crux of the Court’s findings.²⁹¹ Such limitations remain contingent on the Respondent’s own climate framework, which, as demonstrated below, is absolutely insufficient see paras 201 *et. seq.*

177. Third, the scientific assessment conducted by the EU’s own independent advisory body, the ESABCC²⁹², shows that the EU’s emission reduction targets lead to substantially higher emissions than “*even an ‘equal per capita emissions’ quantification approach would entitle it to use*”, thus violating the obligations that the Court set out in *KlimaSeniorinnen* paras 550 and 569-571 (see also OF, section 2.5a).

178. This report allows a direct comparison between the EU’s policies and the yardsticks against which the Court held Switzerland to fall short (“**ESABCC Report**”)²⁹³ (see also OF, section II, 2.5a). The Report quantifies the EU’s carbon

Social Committee and the Committee of the Regions, *Stepping Up Europe’s 2030 Climate Ambition - Investing in a Climate-Neutral Future for the Benefit of Our People* (2020) SWD/2020/176 final.

²⁹⁰ Ibid, para 5.3.

²⁹¹ *KlimaSeniorinnen* (n 1), paras 569 and 570.

²⁹² Regulation (EC) No 401/2009 of the European Parliament and of the Council on the European Environment Agency and the European Environment Information and Observation Network [2009] OJ L 126/13, art 10a.

²⁹³ European Scientific Advisory Board on Climate Change, *Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050* (2023) <<https://climate-advisory-board.europa.eu/reports-and-publications/scientific-advice-for-the-determination-of-an-eu-wide-2040>> accessed 19 December 2024 (ESABCC report).

budget based on the CBDR-RC principle. It also quantifies a carbon budget using an “*equal per capita*” quantification approach. As such its approach is aligned with the Court’s assessment in paras 569-571 of the *KlimaSeniorinnen* (as referred in the above).

179. Based on thorough scientific assessment, the EU’s own scientific advisory body finds that the EU’s current targets will lead it to exceed these budgets. The ESABCC reached the conclusion that the EU’s remaining 1.5°C-aligned carbon budget was at most 27 gigatonnes (“Gt”) CO₂ from 2020, using an “equal per capita” approach.²⁹⁴ Most of the methodological approaches that reflected other principles resulted in negative budgets (that is, budgets that have already been exceeded).²⁹⁵ The ESABCC then considered “*feasible climate-neutral pathways for the EU and their implications*.”²⁹⁶ It assessed over one thousand scenarios that were considered to be aligned with 1.5°C at the global, regional and national levels, which however were **not** designed to reflect any legal principles, such as CBDR-RC (see also OF, section II, 2.5a, para 42).

180. Out of the remaining scenarios, the report concluded that the EU could feasibly achieve up to a 95% reduction in GHG emissions by 2040.²⁹⁷ The ESABCC then compared this feasible 95% reduction by 2040-pathway (which considers all GHGs) with the EU’s remaining carbon budget (which only pertains to CO₂).²⁹⁸ Taking all GHG’s into account, the ESABCC concluded that an emissions pathway towards a 95% reduction in GHG emissions by 2040 and net zero by 2050 would lead to cumulative emissions of at least 12 Gt CO₂e more than the most lenient estimate of the EU’s carbon budget (that is, the “equal per capita” allocation).²⁹⁹ Under the most stringent effort sharing approach that the ESABCC

²⁹⁴ Ibid, 28.

²⁹⁵ Ibid 28.

²⁹⁶ Ibid 32.

²⁹⁷ Ibid 45.

²⁹⁸ Ibid 46.

²⁹⁹ Ibid 47.

considered (that is, an “ability to pay” allocation), the gap between the 95% by 2040 pathway and the EU’s carbon budget would consist of 137 Gt CO₂e.³⁰⁰

181. This finding is critical as it means that the EU will exceed its carbon budget, even under the most lenient approach to GHG emissions quantification approach (“equal per capita”).³⁰¹ The Respondent cannot hide behind the collective goals of the EU to fulfill its obligations under Art 8, since these goals alone would result in cumulative emissions exceeding the limits set by *KlimaSeniorinnen*.

182. Should the EU exceed its carbon budget, calculated on an equal-per-capita basis, it follows that all EU Member States, whose individual targets are directly derived from this budget, will also exceed their respective budgets. Thus, the Respondent cannot claim to individually comply with its obligations under the Convention through compliance with its EU minimum obligations alone. This is because such compliance would lead the Respondent to adopt an approach that “allows for more GHG emissions than even an “equal per capita emissions” quantification approach would entitle it to use.”³⁰²

183. Hence, the Respondent’s argument that it meets the obligations set out by the Court in *KlimaSeniorinnen* merely by virtue of its compliance with the EU’s minimum climate framework, cannot be maintained. Indeed, it is evident from the findings of the ESABCC that mere compliance with EU targets fails to provide the Applicant with protection substantively equivalent to that required under the Convention. The Applicant reiterates that this is also not intended by these two complementary regimes, which are not conflicting. In conclusion, the Respondent cannot rely on its alleged compliance with the EU’s targets to prove compliance with its obligations under Art 8 of the Convention.

³⁰⁰ Ibid 47.

³⁰¹ Ibid 15.

³⁰² *KlimaSeniorinnen* (n 1), para 569

(ii) The EU's procedural protection is not equivalent

184. In this section, the Applicant will show that any insufficiencies in the level of protection cannot be effectively challenged. The procedural level of protection offered by the EU legal framework is therefore not equivalent to the one afforded to him under the Convention for the purposes of the *Bosphorus* presumption.

185. The Applicant submits that “viewed as a whole”³⁰³ the procedural “control mechanism” for ensuring adequate protection of individuals like him against risks of climate change is not equivalent to that under the Convention.³⁰⁴ This can be derived from at least three aspects of the present EU control mechanism in the realm of climate protection.

186. First, it is evident from the *Armando Ferrão Carvalho and Others v. The European Parliament and the Council*³⁰⁵ - known as the “People’s Climate Case” - that access by individuals to the CJEU in climate matters is extremely limited due to the applicable *Plaumann* doctrine.³⁰⁶ The CJEU’s decision in *Armando Ferrão Carvalho and Others v. The European Parliament and the Council*³⁰⁷ confirms consistent case law on restricted standing of individuals and the principle that annulment actions are objective reviews, and therefore cannot be used to uphold subjective rights.³⁰⁸

187. Consequently, it is practically impossible for individuals such as the Applicant

³⁰³ *Bivolaru and Moldovan v France* App no 40324/16 and 12623/17 (ECHR, 25 March 2021), para 130.

³⁰⁴ See *Bosphorus* (n 262), para 160]: ‘[T]he effectiveness of such substantive guarantees of fundamental rights depends on the mechanisms of control in place to ensure their observance’.

³⁰⁵ Case C-565/19 P *Armando Carvalho and Others v European Parliament and Council of the European Union* [2021].

³⁰⁶ See also partly concurring and partly dissenting opinion of Judge Eicke in *KlimaSeniorinnen* (n 1), para 51(b) who noted that ‘individuals and associations only have very limited standing before the [CJEU] under Article 263 TFEU’.

³⁰⁷ *Armando Carvalho* (n 305).

³⁰⁸ *Ibid.*

³⁰⁹ Dörr, ‘Art 263 AEUV’ in Grabitz et al. (eds), *Das Recht der Europäischen Union* (83 edn, C.H.Beck 2024) 1.

to be granted standing to bring an action against a measure of general application, such as the ECL or other GHG mitigation measures adopted by the EU.³⁰⁹ Individuals also have no procedural safeguards in applying to European Courts concerning the infringement of their fundamental rights under the CFREU. Moreover, it is worth noting that so far no interpretation equivalent to the one provided by this Court in *KlimaSeniorinnen* has been issued by the CJEU of any of the rights contained in the CFREU.

188. Second, the CJEU, as set out by its jurisdiction, exercises control primarily via the preliminary reference procedure. It is thus upon the domestic courts to reach out to the CJEU concerning questions of interpretation of EU-law, yet domestic courts are reluctant to do so and are not bound by any party requests. Notably, the Applicant requested a preliminary ruling regarding the scope and level of protection granted to him under Article 37 CFREU.³¹⁰ This request was not dealt with by the Constitutional Court. Third, access to the CJEU under the amended Aarhus Regulation only concerns non-legislative acts of general application, thus excluding legislative acts such as the ECL, the ESR and others climate-related acts adopted by the EU.³¹¹

189. In light of this, there is a complete absence of procedural avenues to challenge the EU's failure to afford protection of human rights against the adverse effects of

³⁰⁹ Christiansen/Masche, 'Klimarechtsschutz und Paradoxien beim EuGH - Warum die Plaumann-Formel nicht mehr zeitgemäß ist' (2023) 1 ZEuS 31, 31; Statement of claim in the *People's Climate Case*, para 132, available at <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20180524_Case-no.-T-33018_application.pdf> accessed 1 March 2025. This was also observed by President Judge Síoifra O'Leary of the European Court of Human Rights in the context of the oral hearings of *Duarte* (n 4), recalling that some of the traditional remedies existing under EU law would not be available avenues to assess the adequacy of EU climate mitigation targets. With respect to the potential of an Annulment Action, Judge O'Leary observed that: "*We know from Carvalho against the European Parliament and Council that it is extremely difficult if not impossible in the climate change context for the time being, under EU law, to establish standing, individual concern.*"

³¹⁰ Applicant's Individual Application (submitted as Doc 20 & 20b in the Annex), section 10.

³¹¹ Pagano, 'Climate Legal Mobilization Under the New Aarhus Regulation' (2024) 25(6) GLJ 919.

climate change. This also serves to show that it's not the intention of the EU-supervisory mechanism to replace the Convention's control system, but rather to complement it. Thus, there is no equivalent level of procedural protection for the Applicant as granted to him under Art 8, 6 and 13 of the Convention.

190. Lastly, equating these two different types of supervisory system is a clear misunderstanding of their different roles and as such would further entrench the existence a real risk “*of a vacuum in the protection of Convention rights.*”³¹² In light of the absence of any national procedural safeguard for the Applicant to address his pressing need for adequate protection, (see sub-section 2, section II the protection granted by this Court under the Convention is thus all the more crucial.

191. **In light of the foregoing, it is clear that the two-fold criteria for the applicability of the *Bosphorus* presumption are not met in this case. The Applicant therefore submits that the *Bosphorus* presumption is thus not applicable in this case.**

c) The *Bosphorus* presumption can be rebutted in this case

192. Should the Court nevertheless find it appropriate to apply the *Bosphorus* presumption, the Applicant will now demonstrate that the presumption is rebutted in his case. According to the Court's case law, the *Bosphorus* presumption can be rebutted if the protection of the Convention's rights is “*manifestly deficient*”³¹³ and “*this situation cannot be remedied by European Union law.*”³¹⁴

193. The Applicant submits that the Respondent's regulatory framework to mitigate the adverse effects of climate change is manifestly deficient (see para 25 *et.seq*; OF, section III, 2.1). The Respondent has also not provided any procedural safeguards granting the Applicant the possibility to demand protection under the Convention or the CFREU (see sub-section 2). This failure is all the more acute as the

³¹² *Duarte* (n 4), para 202

³¹³ *Avotiņš* (n 275), para 116.

³¹⁴ *Ibid.*

Respondent's national regulatory framework and policies do not allow for the Respondent to even meet its EU-inferred targets (see OF, subsection III, 3.2a).

194. These implementation deficits have not been remedied by measures available under EU law. Even the infringement procedure initiated³¹⁵ by the European Commission against Austria for its deficient NECP³¹⁶ did not lead to the submission of a fully compliant NECP. Further, the Applicant does not even have any procedural safeguards to effectively address the alleged infringement of his rights under Art 7 CFREU with the European Courts.

195. The Applicant concludes that the *Bosphorus* presumption must be rebutted, due to the manifestly deficient protection provided by the Respondent, and the inability of the current EU law framework to remedy to this deficiency. This is all the more urgent in light of what the Court has termed the “*pressing need to ensure the applicant’s individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.*”³¹⁷

196. **In conclusion of all the above, it follows that EU-inferred climate mitigation commitments do not absolve the Respondent from its human rights obligations toward the Applicant under Art 8. Even if it fully complies with its obligations under EU law - the Respondent must still demonstrate that it has itself discharged its obligations under Art 8 of the Convention. Below, the Applicant will show that the Respondent has failed to do so.**

2.2. The Respondent’s failure to adopt an adequate climate regulatory framework

197. In the following the Applicant will demonstrate the Respondent is failing to

³¹⁵ And now closed.

³¹⁶ Federal Ministry for Sustainability and Tourism of the Republic of Austria, ‘Integrated National Energy and Climate Plan for Austria 2021-2030’ (2018).

³¹⁷ *KlimaSeniorinnen* (n 1), para 487b.

comply with its “*primary duty*” set out in *KlimaSeniorinnen* which unambiguously is “*to adopt, and effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change.*”³¹⁸

198. When assessing whether a State has remained within its margin of appreciation,³¹⁹ the Court will examine whether the competent domestic authorities 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 sub-paragraphs (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.”³²⁰

199. Applying this framework to the present case, the Applicant will demonstrate that none of these obligations have been met. Consequently, the Respondent has failed to effectively ensure the Applicant’s right to protection from the adverse

³¹⁸ Ibid, para 545.

³¹⁹ Ibid, para 543.

³²⁰ Ibid, para 550.

effects of climate change under Art 8.

200. Additionally, the Applicant submits that the Respondent's duty to mitigate climate change under Art 8 must also be informed by Art 11 CRPD, which requires State Parties to take "all necessary measures to ensure protection and safety of persons with disabilities in situations of risk, including [...] the occurrence of natural disasters"³²¹ (emphasis added). In that regard, the Respondent's positive obligation to protect the Applicant under Art 8 by way of effective climate mitigation is one of due diligence and as such subject to an even higher level of scrutiny.

a) The Respondent fails to meet its obligations under § 550(a) and 550(b)

201. The Respondent has not complied with its obligations under para 550(a) or para 550(b). The Applicant submits that, just as in *Klima.Seniorinnen*, para 550(a) and para 550(b) should be assessed together, in order for the Court to take all of Austria's legislative and policy measures into account in a meaningful way. The Court specified that the measures under para 550 must "*be incorporated into a binding regulatory framework at the national level*" and that "*[t]he relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures.*"³²²

202. The Court recognised that the most important factor in determining a State's contribution to climate change is the quantification of its remaining cumulative emissions until it reaches net zero.³²³ This means that any binding climate framework needs be based on a scientifically valid quantification of GHG-limitations, by a carbon budget or equivalent.³²⁴ The main purpose of the regulatory framework required by the Court is to ensure that the limitations on national GHG emissions are respected. The Court rightly had difficulties accepting that the regulatory obligations under Art 8 could be fulfilled without being based on any

³²¹ Art 11 CRPD.

³²² *Klima.Seniorinnen* (n 1), para 549.

³²³ *Ibid*, para 572.

³²⁴ *Ibid*, para 550a.

quantification of future GHG emissions.³²⁵ As will be shown below, the same certainly holds true for the Respondent.

203. In Austria, the KSG is currently the only binding legislation addressing GHG-emissions reductions in the State (see paras 24 *et. seq.*). It does not provide for a target year for carbon neutrality. It provides only for sectoral targets up until the end of 2020, which are not based on any quantification of the national carbon budget or equivalent.³²⁶ These targets were aimed at aligning with the Respondent's commitments under the European Effort Sharing Regulation (“**ESD**”), governing the 2013-2020 period, which was minus 16% compared to 2005 levels.³²⁷

204. It is instructive to compare this situation to the facts the Court ruled upon in *KlimaSeniorinnen*. In *KlimaSeniorinnen*, Switzerland had adopted a 2050 net-zero target, as well as interim targets covering the period between 2031 and 2050, but was still found in breach of its Art 8 obligations.³²⁸ In terms of its action up to 2020, its economy-wide target of minus 20% by 2020 (compared to 1990 levels) was considered insufficient in light of findings by the IPCC regarding the importance of developing nations reducing their emissions by a minimum of minus 25% by 2020 compared to 1990 levels.³²⁹ Additionally, the Court noted that Switzerland's average emissions reductions between 2013 and 2020 of roughly minus 11% compared to 1990 levels “*indicates the insufficiency of the authorities' past action to take the necessary measures to address climate change*”.³³⁰

205. By comparison, the Respondent's 2020 targets under the KSG were less ambitious than Switzerland's 2020 target and did not even cover all sectors.³³¹

³²⁵ Ibid, para 572.

³²⁶ § 3(2) KSG.

³²⁷ Notably, this target is lower than the 2020 target for Switzerland, which was minus 20% compared with 1990 levels. *KlimaSeniorinnen* (n 1), para 558.

³²⁸ *KlimaSeniorinnen* (n 1), paras 563-64, 566.

³²⁹ Ibid, para 558.

³³⁰ Ibid, para 559.

³³¹ The KSG did not cover the ETS, only the non-ETS sector.

Although the Respondent achieved its ESD target for 2020 of minus 16% in the non-ETS sectors (compared to 2005), this was only by accident.³³² When looking at the economy wide emissions, it is striking that emissions (incl. LULUCF) actually increased by 1.1% in 2020 compared to 1990.³³³ Pursuant to the findings in *KlimaSeniorinnen*, the Respondent has failed to comply with para 550(a) for the period up to 2020.

206. Under the Respondent's domestic regulatory frameworks - unlike in Switzerland - there are no interim targets after 2020. Austria has no concrete plans to update its domestic climate-related policies to address this lacuna. In its Updated NECP, it merely mentions the intention to reform the KSG without any specific plan thereto.³³⁴ The Respondent clearly also falls short of the requirement of para 550(b).

207. In *KlimaSeniorinnen*, the Court further examined measures for the period after 2020 and took into account Switzerland's updated NDC as well as pending revisions to the Swiss Climate Act.³³⁵ The revisions envisaged a 2050 net-zero target that called for emissions to “*be reduced ‘as far as possible’*”,³³⁶ and provided for an intermediate target for 2040³³⁷ as well as for the years 2031 to 2040³³⁸ and 2041 to 2050.³³⁹ Overall, the Court still found that the period from 2024 to 2030 was left unregulated, as the Act did not set “*concrete measures to achieve those objectives.*”³⁴⁰

³³² This target was largely achieved as a result of the COVID-19 pandemic. In 2021, ESR emissions increased again compared to 2020, resulting in a reduction of only 14.4% in 2021 compared to 2005.

³³³ See Austria's National Energy and Climate Plan, Table 19. Row “total emission (incl. LULUCF)”

³³⁴ BMK, ‘Integrierter nationaler Energie- und Klimaplan für Österreich’ (Final Updated Version, 3 December 2024), 65, find the english and german version here <https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en> accessed 28 February 2025.

³³⁵ *KlimaSeniorinnen* (n 1), paras 563-564.

³³⁶ Ibid para 564.

³³⁷ Ibid, para 564: ‘75% reduction compared with 1990 levels’.

³³⁸ Ibid: ‘average of at least 64%’.

³³⁹ Ibid: ‘average of at least 89% compared with 1990 levels’.

³⁴⁰ Ibid para 565.

The Court also did not accept that Switzerland’s “*mere legislative commitment to adopt the concrete measures ‘in good time’*” satisfied its obligations under Art 8.³⁴¹

208. The Respondent rightly refrains from asserting that the KSG is sufficient to meet its Art 8 obligations. Yet, its claims that the KSG is undergoing a “*fundamental revision*”³⁴² is a clear misrepresentation: the revision process initiated by a Citizen’s Initiative was ultimately and indefinitely stopped in 2023 after numerous failed attempts to pass a new legislation.³⁴³

209. The Applicant further points out that the Respondent has not adopted a net-zero target anywhere in its domestic legislative framework, which is a clear breach of the requirement in para 550(a). It’s 2040 target concerns the non-ETS sector only³⁴⁴ and is a non-binding policy ambition; it is therefore purely aspirational.³⁴⁵ Moreover, this sectoral aspiration is not based on a quantified carbon budget, and the Respondent has not defined any intermediary targets to reach this goal.³⁴⁶

210. Lastly, the Court in *KlimaSeniorinnen* found the absence of any quantification of Switzerland’s remaining carbon budget to constitute a “*critical lacuna*” in its domestic regulatory framework.³⁴⁷ In this case, neither the KSG and its targets, nor Austria’s aspirational 2040 target, rest upon the quantification of national GHG emissions limitations or an equivalent. The Respondent does not even claim to have determined a 1.5°C-aligned carbon budget, nor does it rely on an equivalent quantification method to determine or justify its emissions reduction goals.

211. In response to the Respondent’s claim that the Austrian Environmental

³⁴¹ Ibid para 557.

³⁴² Respondents Observations III.7.2.1.

³⁴³ European Parliamentary Research Service, ‘Briefing - Austria's climate action strategy’ (2024), 2.

³⁴⁴ Updated NECP (n 334), 19, footnote 5 as well as page 86.

³⁴⁵ Ibid.

³⁴⁶ ‘Regierungsprogramm 2020-2024 (Government Program 2020-2024)’, 72 ff, available in German at <https://www.dievolkspartei.at/Download/Regierungsprogramm_2020.pdf> accessed 28 February 2025.

³⁴⁷ *KlimaSeniorinnen* (n 1), 573.

Agency issues non-binding reports calculating Austria's yearly emissions within the existing EU framework,³⁴⁸ the Applicant notes that the Agency does not provide an overall quantification of Austria's remaining carbon budget, nor any estimate of its projected cumulative emissions. As such, this does not amount to a calculation by the Respondent of its remaining carbon budget.

212. To conclude, it is clear that the Respondent's existing mitigation policies are not based on a quantification of its national GHG emissions limitations,³⁴⁹ and therefore not capable of mitigating the adverse effects of climate change.³⁵⁰ Taking all the Respondent's domestic measures into account, it is clear that the Respondent has not put in place the regulatory measures necessary to comply with its obligations under para 550(a) and para 550(b).³⁵¹ The Applicant submits that the Respondent's deficient domestic regulatory framework in and of itself violates its obligations under Art 8 of the Convention.

(1) The measures derived from the Respondent's EU membership do not satisfy its obligations under para 550(a) and 550(b)

213. The Respondent argues that any of its deficiencies are made up for by virtue of its obligations under EU law, including the ECL,³⁵² the ESR,³⁵³ and the EU

³⁴⁸ Respondent Observations Enclosure 2, II. 1.1.

³⁴⁹ *KlimaSeniorinnen* (n 1), paras 570 and 573.

³⁵⁰ *Ibid*, para 545.

³⁵¹ *Ibid*, para 561.

³⁵² The Respondent has claimed that: 'By means of the European Climate Law both the climate neutrality target 2050 and the net greenhouse gas reduction by at least 55% by 2030 (compared to 1990) became legally binding.' Respondents Observations II 6.2.1.

³⁵³ The Respondent claims that the absence of a reviewed KSG does not lead to a 'regulatory gap with regard to the annual GHG emission reduction targets, which are binding for Austria for the years 2021 to 2030, because they have been defined by directly applicable EU law (Effort Sharing Regulation)'. Respondents Observations III.4.1.7.

INDC³⁵⁴ (see OF, section III, 3.1). The Respondent hereby completely disregards the fact that the EU framework was always intended to be a minimum framework for collective action of its Member States and as such, does not intend to replace the Convention's human rights regime (see above paras 146 *et seq.*).

214. Even if the Court were to consider the Respondent's EU commitments when assessing its compliance with para 550(a), such commitments still cannot make up for the deficiencies in Austria's national regulatory framework. In paras 146 *et seq.* above the Applicant already set out several reasons why the Respondent's cannot hide behind the collective goals of the EU. These collective goals are therefore not capable to address the legislative lacuna of the Respondent discussed in paras 201 *et seq.* The same holds true for the Respondent's specific goals that are determined under the EU legislative framework. Further, the Respondent is only bound to achieve the EU's 2050 net-zero target *collectively*. Hence, the Respondent, *individually*, is not bound to achieve net zero at the national level at the same time as the EU reaches net zero.

215. **To conclude, the above demonstrates that the EU's minimum framework cannot take replace a domestic regulatory framework. Without a binding domestic legislative framework based on clearly quantified GHG-limitations, the Respondent cannot render Convention rights practical and effective.**³⁵⁵

(2) The Respondent's emissions will in any case exceed its national carbon budget

216. Additionally, the Applicant will show that the Respondent's current policies will lead to emissions well in excess of its obligation as set out in *KlimaSeniorinnen*.

217. In *KlimaSeniorinnen*, the Court considered evidence provided by the applicants

³⁵⁴ The Respondent has made reference to the updated INDC submitted by the EU and its Member States enshrining a new 2030 target of 55% emissions reduction by 2030, compared to 1990 levels. Respondents Observations II.6.2.1.

³⁵⁵ *KlimaSeniorinnen* (n 1), 545.

to determine if Switzerland had assessed its targets in light of a carbon budget. The applicants estimated that from 2020 onwards, Switzerland’s “equal per capita” budget was 0.44 Gt CO₂ for a 67% chance of meeting the 1.5C limit (or 0.33 Gt CO₂ for a 83% chance). If Switzerland achieved its own set climate targets,³⁵⁶ the Swiss government was projected to emit around two times the emissions its “equal per capita” budget would allow.³⁵⁷ The applicants estimated that the national “equal per capita” budget would be exhausted between 2030-2034. As stated above, the Court concluded that “[t]hus, 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”.³⁵⁸

218. Accordingly, the Applicant presents two experts reports demonstrating that Austria exceeds its carbon budget *even* when quantified on an “equal per capita” basis. A comprehensive summary of both reports is provided in the Observations on the Facts (see OF, section II, 2.7).

219. The first report, *Estimates of fair share carbon budgets for Austria* (“**Pelz et al. 2025**”), took the same methodological approach the EU’s own scientific advisory board did in the ESABCC-Report. The second report entitled “Austria’s remaining carbon budget: Calculations of Austria’s carbon budget in line with the methodical approaches taken in the Austrian academic literature” (“**Kirchengast & Steininger 2025**”), was undertaken by two renowned Austrian scientists who have contributed significantly to independent reports concerning Austria’s carbon budget (Prof. Gottfried Kirchengast and Prof. Karl Steininger). This report provides updated estimates of the Respondent’s carbon budget from those previous reports, based on the emission dataset of the Austrian Environmental Agency, an Austrian regulatory authority.

³⁵⁶ CO₂ emissions reductions of 34% by 2030, 75% by 2040 and net zero by 2050.

³⁵⁷ In the expert report submitted by the applicants to the ECtHR, the experts determined that on the basis of its current and planned targets, Switzerland would apportion itself 0.2073% of the remaining global CO₂ budget as of 2022, compared to a population share of 0.1099%.

³⁵⁸ *KlimaSeniorinnen* (n 1), para 569.

220. It should be noted at the outset that these studies have produced slightly different estimates of the Respondent's remaining carbon budget because of the normative, due diligence-based decisions underlying the calculations (see OF, section II, 2.7) Despite the differences in normative assumptions, the results of both studies come to completely aligned conclusions: the "equal per capita" budget from 2023 to the time Austria reaches net zero is estimated to be between 50 Mt CO₂³⁵⁹ and 164 Mt CO₂³⁶⁰. If its emissions remain at similar levels to 2022 (~61 Mt CO₂)³⁶¹, this would imply that the Respondent may have already exhausted its "equal per capita" budget in 2024 according to Pelz et al. 2025,³⁶² or may have less than a year's worth of budget remaining from the start of 2025 according to Kirchengast & Steininger.³⁶³ The "equal per capita" approach was used in *KlimaSeniorinnen*, where the language implies that this is the most lenient approach to calculating a state's national budget that the Court considered; an understanding confirmed by the ESABCC³⁶⁴

221. Despite the fact that the Respondent has no binding national emissions reduction targets, it seeks to point to its aspirational 2040 net-zero target and its obligations under EU law to collectively achieve the EU's targets with other EU Member States to demonstrate its compliance with its Convention obligations. In this respect, Kirchengast & Steininger 2025 have quantified that, even if the Respondent reduced its emissions in line with these targets, and even assuming that the 2040 aspirational target applies across the economy, it would still fail to

³⁵⁹ Pelz et al. 2025 (submitted as Doc 34 in the Annex), 16, 19

³⁶⁰ Kirchengast & Steininger 2025 (submitted as Doc 35 in the Annex), 13, 17

³⁶¹ "Treibhausgas-Emissionen nach CRF" (data.gv.at)

<<https://www.data.gv.at/katalog/dataset/78bd7b69-c1a7-456b-8698-fac3b24f7aa5>> accessed 28 February 2025. OLI 2023, emissions for 1990-2022. This is the official publicly available dataset of the Austrian environment agency.

³⁶² Calculation: (Remaining CO₂ budget starting in 2023) divided by (CO₂ emissions from 2022). CO₂ budget Pelz et al. 2025. Page 16, 19 and see CO₂ emission of 2022 (ibid)

³⁶³ Calculation: (Remaining CO₂ budget starting in 2023) divided by (CO₂ emissions from 2022). CO₂ Budget Kirchengast & Steininger 2025. Page 13, 17 see CO₂ emission of 2022 (n 358)

³⁶⁴ ESABCC Report (n 293), 15.

respect its “equal per capita” GHG- budget. Assuming Austria’s emissions reductions are aligned with the EU’s 2030 target, Kirchengast & Steininger 2025 estimate that Austria’s “equal per capita” 1.5°C aligned budget would be used up by 2028. This also means that Austria is thereby also exposing the Applicant and younger generations to a disproportionate burden to reach net zero.³⁶⁵

222. If the Respondent reduces its national emissions in line with the EU’s legislated and proposed targets,³⁶⁶ Austria will emit 580 Mt CO₂e between 2023 and 2050.³⁶⁷ Given that Kirchengast & Steininger 2025 estimates that Austria’s “equal per capita” carbon budget would equate to approximately 309 Mt CO₂e, Austria will produce at least 271 Mt CO₂e more emissions than its “equal per capita” budget would allow.³⁶⁸

223. Both reports also provide estimates of when the Respondent would need to reach net-zero CO₂ emissions to comply with the “equal per capita” carbon budget. Pelz et al. 2025 estimate that net-zero CO₂ would need to be reached in 2025. Kirchengast & Steininger 2025 estimate that net-zero CO₂ would need to be reached in 2029, while net-zero GHG emissions would need to be reached in 2033. As such, even the larger estimate of Austria’s “equal per capita” carbon budget presented in Kirchengast & Steininger 2025 would require measures much more stringent than Austria currently has in place domestically or under its obligations derived from EU law.

224. The Applicant asserts that the Respondent has not adopted, nor quantified its remaining GHG emissions by way of a carbon budget or otherwise. The Applicant further notes that no such calculations are underway, and its remaining domestic

³⁶⁵ *KlimaSeniorinnen* (n 1), para 484.

³⁶⁶ Minus 55% by 2030 compared to 1990 levels, minus 90% by 2040 compared to 1990 levels and net zero by 2050.

³⁶⁷ Assuming also a straight-line reduction between current emissions and 2030, between 2030 and 2040, and between 2040 and 2050.

³⁶⁸ Figure 3 of Kirchengast & Steininger 2025 (submitted as Doc 35 in the Annex); see also Figure 6 of Kirchengast & Steininger 2025, and OF, section II, 2.7, para 67 g.

GHG emissions limitations are not sufficiently defined under the EU minimum framework.

225. In light of the findings above, it is clear that the Respondent's targets (both domestic and derived from its EU membership) are insufficient to comply with the framework set out in *KlimaSeniorinnen*. Under both of the assessments, the Respondent would be producing nearly twice as many emissions as permitted under an "equal per capita" budget.³⁶⁹ This level of national carbon budget exceedance is similar to that of Switzerland, which was found to be in breach of its Art 8 positive obligations.

(3) The Respondent's climate framework disregards principles of international law

226. When assessing whether Switzerland had discharged the obligation to quantify the limitations on its GHG emissions, the Court made two further, crucial findings. First, it rejected Switzerland's argument that "*there was no established methodology to determine a country's carbon budget*".³⁷⁰ In this respect, the Court noted that the German Constitutional Court accepted that budgets could be determined on the basis of CBDR-RC.³⁷¹ It continued that "[t]his principle requires the States to act on the basis of equity and in accordance with their own respective capabilities".³⁷² Second, based on a quantification provided by the applicants, the Court found that "[t]hus, 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."³⁷³

³⁶⁹ The Applicant notes that Pelz et al. 2025 did not estimate a GHG budget for Austria, so its estimation of the Respondent's 'equal per capita' national carbon budget cannot be compared to the EU's economy-wide targets (which concern all GHGs). However, the fact that the 'equal per capita' carbon budget that Pelz et al. 2025 estimated is only about a third of the size of the estimate in the Kirchengast & Steininger 2025 (see pages 12, 13) estimate implies that the volume of excess emissions between 2023 and net zero would be even larger than indicated in the Kirchengast & Steininger 2025.

³⁷⁰ *KlimaSeniorinnen* (n 1), para 570.

³⁷¹ *Ibid*, para 571.

³⁷² *Ibid*, para 571.

³⁷³ *Ibid*, para 569.

227. Ultimately, the Court’s analysis in *KlimaSeniorinnen* implies that States can and therefore must undertake a proper due diligence exercise when setting their emissions reduction targets.³⁷⁴ This is to ensure that those targets are aligned with a national budget derived from the remaining global carbon budget for 1.5°C. After all, there is a finite amount of GHG emissions that can be emitted in the atmosphere if the world wants to limit global temperature rise to 1.5°C.

228. Above, the Applicant has shown that the Respondent’s policies will result in emissions in excess of its “equal per capita” carbon budget, which is premised “*on the equal rights to the atmospheric commons to all individuals, and allocates emission allowances to each country in proportion to its population.*”³⁷⁵ However, this approach to burden sharing does not account for the fact that the Respondent is a developed country, and as such does not comply with the principle of CBDR-RC – a principle to which the Respondent has officially committed to.

229. In this regard, the Applicant also requested experts to consider Austria’s budget using methods reflecting principles of “responsibility”, “capability”, and “responsibility and capability” - principles directly derived from CBDR-RC, as indicated by the Court.³⁷⁶ (for an explanation of these key concept see also OF section II, 2.2). Across all the results in Pelz et al. 2025 and Kirchengast & Steining 2025, only a single methodological approach provided a positive estimate of the Respondent’s national carbon budget.³⁷⁷ All other approaches estimated that the Respondent’s remaining national carbon budget has already

³⁷⁴ Ibid, para 538e, 550d; see also, eg: *Mileva and Others v Bulgaria* App no 43449/02 and 21475/04 (ECHR, 25 November 2010), para 98; *Fadeyeva v Russia* App no 55723/00 (ECHR, 30 November 2005), paras 128-129; *Cordella and Others v Italy* App no 54414/13 and 54264/15 (ECHR, 24 June 2019), para 161; *Pavlov and Others v Russia* App no 31612/09 (ECHR, 11 January 2023), para 75.

³⁷⁵ Marc Fleurbaey et al, ‘Sustainable Development and Equity’ in Edenhofer et al (eds), *Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (CUP 2014) 320.

³⁷⁶ *KlimaSeniorinnen* (n 1), para 571.

³⁷⁷ This was the “basic needs” approach in the Kirchengast & Steining 2025 (page 13), which estimated the Respondent’s national carbon budget to be 143 Mt CO₂.

been depleted.³⁷⁸ In fact, Pelz et al. 2025 estimate that the lowest estimate of Austria's national carbon budget would have been depleted as long ago as 1998.³⁷⁹

230. The purpose of the Applicant requesting these scientific results is not to present the Court with a single definitive estimate of Austria's national carbon budget. Rather, it is to illustrate that the Respondent is *capable* of taking into account the principle of CBDR-RC when identifying its national carbon budget.

231. The Applicant points out that that this interpretation of CBDR-RC is also shared by ITLOS in its Advisory Opinion on climate change and international law (see OF, section I, 1.2) In reaching its conclusion that the State's duty to combat climate change "*is one of due diligence*" under Art 194 UNCLOS,³⁸⁰ ITLOS confirmed that States must determine their measures also in reference to "*relevant international rules and standards contained in climate change treaties such as the UNFCCC and the Paris Agreement*".³⁸¹ Relying on the principle of CBDR-RC,³⁸² ITLOS concluded that "*the scope and content of necessary measures may vary in accordance with the means available to States Parties and their capabilities*".³⁸³ It thus interpreted CBDR-RC to mean that "*States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities*".³⁸⁴

232. The Applicant submits that the Court's interpretation of CBDR-RC should equally guide the Respondent in implementing its obligation under para 550(a) of *KlimaSeniorinnen*. After all, the Court has endorsed that this is possible.³⁸⁵ Moreover,

³⁷⁸ The reports provided findings ranging from *minus* 280 Mt CO₂ to *minus* 1,630 Mt CO₂. Pelz et al 2025 (page 16).

³⁷⁹ Using a methodological approach reflecting "responsibility and capability".

³⁸⁰ Advisory Opinion on Climate Change (Commission of Small Island States on Climate Change and International Law) (Advisory Opinion) [2024] ITLOS Reports, para 243.

³⁸¹ Ibid, para 243.

³⁸² Ibid, paras 225-229.

³⁸³ Ibid, para 243.

³⁸⁴ Ibid, para 227.

³⁸⁵ *KlimaSeniorinnen* (n 1), para 571.

the Court’s assessment of Swiss climate targets shows that merely stating that principles of fairness and CBDR-RC were considered falls short of the regulatory obligation defined in para 550(a).³⁸⁶ Rather, fairness principles must be *quantified* to effectively protect human rights from climate change under the Convention.

233. Lastly, the Applicant notes that the Respondent also has not calculated the emissions resulting from the import of goods and their consumption in its territory (“**embedded emissions**”). In *KlimaSeniorinnen*, the Court found that the effect of embedded emissions is a matter to be addressed when assessing the Respondent’s State responsibility for these effects. It also accepted that, as long as the effects of these emissions were felt by the applicants who are located in the Respondent State’s jurisdiction, their regulation is incumbent on the latter.³⁸⁷

234. Kirchengast & Steininger 2025 note that the Respondent’s embedded emissions have consistently been about 50% higher than its territorial emissions. Although the latest data necessary to calculate the Respondent’s level of embedded emissions is currently unavailable, it is nonetheless projected those levels have remained and will remain approximately the same.³⁸⁸ In line with the argument presented above, given the Respondent’s important carbon-footprint, the Applicant submits that the principle of CBDR-RC calls for the Respondent to also quantify its current levels of embedded emissions and to account for these levels in the quantification of its overall carbon budget, or alternatively to adopt measures necessary to mitigate these emissions as much as possible.

b) The Respondent’s failure to meet its obligations under Art 8 - §§ 550 (c)-(e)

235. The remaining requirements of para 550 in *KlimaSeniorinnen*, the obligations in paras 550(c)-(e) go beyond the codification of targets in legislation alone. Rather they require “*immediate action*”,³⁸⁹ and evidence that these obligations were indeed

³⁸⁶ Ibid, paras 569-572.

³⁸⁷ Ibid, paras 287.

³⁸⁸ Kirchengast & Steininger 2025 (submitted as Doc 35 in the Annex), 19, 20.

³⁸⁹ *KlimaSeniorinnen* (n 1), para 549.

met,³⁹⁰ whilst bearing the due diligence obligation to keep reduction targets updated based on best available science.³⁹¹ They also require States to act in “*good time*” and in a consistent manner when devising and implementing climate policies.³⁹²

236. In light of the general jurisprudence under Art 8, the Respondent bears the onus to substantiate that it has met its due diligence obligations.³⁹³ The Applicant claims that the Respondent has failed to provide such proof (see also OF, section III, 2)

237. In terms of “*due compliance*” with its targets,³⁹⁴ the Respondent itself has estimated that it is not on track to comply with its aspirational 2040 net-zero target, nor any of the targets it must comply with under EU law. In its Updated NECP, Austria itself admits that between 1990 and 2022 its GHG emissions have only decreased slightly:³⁹⁵ Austria’s emissions (excl. LULUCF) amounted to 79.1 Mt CO₂e in 1990 and 72.8 Mt CO₂e in 2022, which corresponds to a decrease of only 8.0%.³⁹⁶ In the Updated NECP, the Respondent notes: “*The current measures described below are already making an important contribution to limiting greenhouse gas emissions, but based on current knowledge, they are not sufficient to achieve Austria’s 2030 target. Further measures are needed to achieve this.*”³⁹⁷

³⁹⁰ Ibid, para 550c.

³⁹¹ Ibid, para 550d.

³⁹² Ibid, para 550e.

³⁹³ *Fadeyeva* (n 374), paras 128-133; *Cordella* (n 374), para 161; *Jugheli and Others v Georgia* App no 38342/05 (ECHR, 13 October 2017), para 76; *Dubetska and Others v Ukraine* App no 30499/03 (ECHR, 10 May 2011), para 155.

³⁹⁴ *KlimaSeniorinnen* (n 1), para 550c.

³⁹⁵ Updated NECP (n 334) 15.

³⁹⁶ “Treibhausgas-Emissionen nach CRF” (data.gv.at) <<https://www.data.gv.at/katalog/dataset/78bd7b69-c1a7-456b-8698-fac3b24f7aa5>> accessed 28 February 2025. OLI 2023 emissions for 1990-2022. This is the official publicly available dataset of the Austrian environment agency.

³⁹⁷ Updated NECP (n 334) 41.

238. The Respondent also estimates in its Updated NECP that it could make the following economy-wide reductions compared to emissions levels in 1990: (i) With existing measures (“**WEM**”): minus 11% by 2030, minus 22% by 2040 and minus 25% by 2050;³⁹⁸ (ii) With additional measures (“**WAM**”): minus 28% by 2030, minus 52% by 2040 and minus 67% by 2050.³⁹⁹

239. Clearly, the Respondent’s anticipated economy-wide emissions reductions, as calculated under its WEM and WAM scenarios, are far from aligned with the EU’s overall targets for 2030, 2040 or 2050. In fact, Kirchengast & Steininger 2025 estimate that under the WAM scenario the Respondent would emit twice as much by 2050 as foreseen under the EU targets. As set out in the para above, the Respondent wouldn’t even reach net zero by 2050 under the WAM scenario, it would continue to emit thereafter. Likewise, the measures under the WEM and WAM scenarios are not sufficient for Austria to meet its aspirational 2040 target⁴⁰⁰ (see also OF, section III, 3.2.a, paras 206ff)

240. Kirchengast & Steininger 2025 make the implications of these implementation failures clear. Assuming additional measures under the WAM scenario are fully implemented, Austria would emit 1.125 Gt CO₂e between 2023 and 2050. This implies that Austria would emit approximately 816 Mt CO₂e in excess of its “equal per capita” GHG budget by 2050, and that this budget would be depleted in 2026. This would imply that Austria is on course to produce at least 3.6 times more emissions than under the highest estimate of its “equal per capita” budget.

241. In light of this, the Respondent’s claim that these reductions “[*show*] that the climate action taken by Austria is effective, so that even with deficits still prevailing or improvement potential that is not yet used sufficiently there has been no violation of a positive obligation pursuant to Article 8 of the Convention”⁴⁰¹ is demonstrably false.

³⁹⁸ Ibid, table 19, WEM Scenario including LULUCF.

³⁹⁹ Ibid, table 26, WAM Scenario including LULUCF.

⁴⁰⁰ Ibid, table 19 and table 26.

⁴⁰¹ Respondent Observations III 4.1.7.3.

242. The fact that the Respondent has failed to quantify a national carbon budget, and has not formally adopted national targets to regulate the time period after 2020 are clear indications that it has not exercised due diligence pursuant to para 550(d).⁴⁰² The Respondent has not indicated any plans to carry out such assessment in the foreseeable future despite best available science and support by scientist, which further reflects a lack of due diligence on its part.

243. Moreover, the Respondent has not acted in “good time” and in a consistent manner with respect to its climate policies.⁴⁰³ This is apparent from numerous critical domestic measures that failed due to a lack of political will (see OF, section II, 2.9) including the failed revision of the Austrian Climate Protection Act (see OF, section II, 2.1). Regarding its compliance under EU law, the Respondent submitted its NECP long past the deadline, and only after EU has opened⁴⁰⁴ an infringement proceeding regarding the draft NECP. Also, the delayed updated NECP does not even allow for the Respondent to meet its obligations under EU law. (see OF, section III 3.2 a)

244. **To conclude, it is clear that the Respondent has failed to comply with any of the requirements under §§ 550(c)-(e).**

c) The Respondent’s failure to supplement mitigation measures with adaptation measures

245. Furthermore, the Court has stressed that its “overall” assessment⁴⁰⁵ of a State’s regulatory framework requires mitigation measures to “*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.*”⁴⁰⁶ These adaptation measures “*must be put in place and effectively applied in accordance with the best available evidence [...]*”

⁴⁰² *KlimaSeniorinnen* (n 1), para 550d.

⁴⁰³ *Ibid*, para 550e.

⁴⁰⁴ This proceeding has since been closed.

⁴⁰⁵ *KlimaSeniorinnen* (n 1), para 551.

⁴⁰⁶ *Ibid*, para 552.

*consistent with the general structure of the State's positive obligations in this context.”*⁴⁰⁷

246. The Respondent purports that the Applicant himself can adapt to the severe impacts of climate change as he “*may resort to the health system, social security services and, last but not least, state funding for adaptation measures to reduce the effects of high outdoor temperatures to a tolerable degree*” (see **Enclosure 3**).

247. Although the health system and social security services constitute valuable resources for the Applicant concerning his MS-illness,⁴⁰⁸ social security measures in and of themselves are inadequate “*for alleviating the most severe or imminent consequences of climate change*”⁴⁰⁹ for the Applicant. Most importantly, these services notably do not allow the Applicant to adapt to the increasing adverse consequences of climate change “*to a tolerable degree*”.⁴¹⁰ Further, the Respondent has not yet set out adequate, structural adaption measures consistent with the requirements of climate change and its severe impact on vulnerable people.

248. It is important to note that the Applicant has already, on his own account, taken all available steps to adapt his living environment to accommodate his condition.⁴¹¹ He lives in a passive house, which allows him to keep indoor temperatures at a tolerable degree. However, these personal adaptations are insufficient to fully adapt to the challenges posed by increasing temperatures due to climate change. Without appropriate climate action, the Applicant faces a significant risk of being confined to his home during periods of high temperatures for a growing number of days. Accepting and even suggesting social security services as sole solution for the Applicant's situation constitutes a *de facto* house arrest.

⁴⁰⁷ Ibid, para 552.

⁴⁰⁸ See Respondent Observations Enclosure 3.

⁴⁰⁹ *Klima.Seniorinnen* (n 1), para 552.

⁴¹⁰ Respondent Observations III.3.2.4.

⁴¹¹ See the Applicant's second Personal statement (submitted as Doc 32 in the Annex).

d) The Respondent's failure to guarantee procedural safeguards

249. In *KlimaSeniorinnen* the Court stressed that “*it has already been noted in the Court’s case-law that the procedural safeguards available to those concerned will be especially material in determining whether the respondent State has remained within its margin of appreciation (see paragraph 539).*”⁴¹² As outlined at numerous parts in the submission (see section I, sub-section 2), the Austrian legal framework does not provide for adequate procedural safeguards, especially for vulnerable individuals such as Applicant, to claim their right to an adequate regulatory framework mitigating the adverse consequences of climate change.

e) The Respondent also breached Art 8 by failure to set an end to climate harmful tax subsidies

250. In addition to its failure to adopt an adequate climate mitigation framework, the Respondent’s framework is inadequate, as it does not contain an end date for climate harmful fiscal measures,⁴¹³ such as fossil fuel subsidies. To the contrary, the Respondent still invests 5,7 Billion EUR/year directly into measures exacerbating the climate crisis without any concrete phase-out plans.⁴¹⁴ (see OF, section III, 2.10)

251. There is legal and scientific consensus that an immediate complete phase-out of fossil fuel is crucial for keeping 1.5°C-limit⁴¹⁵ (see OF; section II, 2.6), especially when considering intergenerational burden sharing.⁴¹⁶ Given this knowledge and the severe impacts the Applicant currently endures, the Respondent’s failure to regulate measures that could easily repealed must – in this context – constitute

⁴¹² *KlimaSeniorinnen* (n 1), para 553.

⁴¹³ *Ibid*, para 479.

⁴¹⁴ The extension in 2023 of the VAT tax privilege, challenged twice before the domestic courts, to other means of transportation, in no way negates the harmful effects of these measures. The Respondent continues to subsidize aviation also in this manner.

⁴¹⁵ UNEP, ‘Production Gap Report’ (8 November 2023).

⁴¹⁶ *KlimaSeniorinnen* (n 1), para 419.

a “*manifest error of appreciation*”⁴¹⁷ of the Respondent’s due diligence obligations under Art 8. Especially since the Respondent has not even quantified its limitations for GHG emission. The Respondent’s approach can also not be reconciled with the precautionary principle which informs the Respondent’s obligation under Art 8, as recognized by this Court in *Tătar v. Romania*⁴¹⁸ and its heightened level of scrutiny under Art 11 CRPD (see para 200).

252. **To conclude, the Respondent must be also found in violation of the Applicant’s rights thereunder.**

2.3. Conclusion on the infringement of Art 8

253. In summary, EU climate commitments do not absolve the Respondent of its obligations under Article 8. Even full compliance with EU law requires the Respondent to independently fulfill these obligations, which it has failed to do.

254. Considering all of the above, it is clear that the Respondent has not adopted an adequate climate regulatory framework in line with *KlimaSeniorinnen*. To that end, the Respondent has not set up a sufficient regulatory framework based on a quantification of a national carbon budget or equivalent, as demanded by para 550(a) and para 550(b). This is readily apparent through an examination of its measures adopted domestically (paras 201 *et seq*) In addition, the Respondent is not able to invoke EU climate policies to compensate for its inadequate domestic regulatory framework (paras 213 *et seq*).

255. Even if its targets are met, the Respondent would exceed its national carbon budget under an “equal per capita” quantification methodology. However, as a developed country, the Respondent has committed to comply with the principle of CBDR-RC. As the Court noted in *KlimaSeniorinnen*, States must rely on this principle when determining their national carbon budgets. Accordingly, the

⁴¹⁷ *Fadeyeva* (n 374), para 105; see also *Buckley v The United Kingdom* App no 20348/92 (ECHR, 29 September 1996), paras 76-77.

⁴¹⁸ *Tătar v Romania* App no 67021/01 (ECHR, 6 July 2009), paras 109-110.

Respondent must calculate its national carbon budget on the basis of CBDR-RC to effectively protect human rights from climate change.

256. As to the remaining obligations under paras 550(c)-(e), the Respondent has also failed to comply on all fronts. Contrary to para 550(c), the Respondent is not on track to implement its aspirational 2040 net zero target, nor any of the targets it is individually or collectively bound to achieve under EU law. The Respondent's failure to update its climate policies with due diligence and "*in good time*" also run afoul of paras 550(d) and 550(e). Finally, the Respondent has neither supplemented its mitigation measures with adaptation measures, nor effectively promoted appropriate procedural safeguards.

257. Accordingly, an assessment of an "*overall nature*"⁴¹⁹ of the Respondent's regulatory actions in the context of climate change must reach the conclusion that it is in breach of Art 8.

258. The Applicant would finally stress that for him, this is not an abstract exercise in testing whether a regulatory framework is sufficient. For him, a failure to mitigate the adverse effects of climate change capable of protecting his human rights has a direct meaning: it will lead him to an increasingly confined existence, cut him off from the outside world for extended periods of time - or increased symptoms of paralysis. He therefore calls on the Court to protect him against such consequences.

VII. Requests to the Court

259. On the basis of the Application, the Observations on the Facts, the above considerations, and its request for just satisfaction and general measures (which is submitted separately), the Applicant hereby respectfully request the Court to declare that:

- a. The Applicant is recognized as having victim status, and that each of his

⁴¹⁹ *KlimaSeniorinnen* (n 1), para 551.

claims is admissible under Art 34 and 35 ECHR, respectively.

- b. The Respondent failed to protect the Applicant's rights to life and private life under Art 8 ECHR, by failing to adopt an adequate 1,5°C aligned framework based on fairness considerations. This includes:
 - i. Its failure to adopt an adequate climate regulatory framework in line with *KlimaSeniorinnen*;
 - ii. Its failure to set up a sufficient regulatory framework based on a quantification of a national carbon budget;
 - iii. Its failure to ensure that its GHG reduction targets will respect its carbon budget, whether quantified under an "equal per capita" methodology, or in ways based on the principle of CBDR-RC;
 - iv. Its failure to ensure that it is on track to implement its targets - not even those it is collectively bound to achieve under EU law;
 - v. Its failure to update its climate policies with due diligence and "*in good time*" also run afoul of paras 550(d) and 550(e);
 - vi. Its failure to supplement its mitigation measures with adaptation measures, and to effectively promote appropriate procedural safeguards.
- c. The Applicant's right of access to court under Art 6 ECHR, and his right to an effective remedy under Art 13 in conjunction with Art 8 has been violated.

260. Against the background of the Application, the OF, the above considerations, and the request for just satisfaction and general measures (submitted separately), the Applicant hereby respectfully submits the following procedural requests to the Court:

- a. Request for an oral hearing on the admissibility and merits of the case, including the delivery of a presentation through PowerPoint slides.

- b. Request that, in accordance with Rule 34.4(a) of the Rules of the Court, the President of the Chamber grants the Applicant leave to use the German language for its oral submissions.
- c. Request that experts nominated by both Parties and by the Court, should it wish to do so, be given the opportunity to provide oral submissions during the hearing on the admissibility and the merits of the case.

On behalf of the Applicant,

Yours faithfully,



Mag^a Michaela Krömer, LL.M

Attorney-at-Law