

Müllner v. Austria

Application no. 18859/21

**REQUEST FOR JUST SATISFACTION
AND GENERAL MEASURES**

Submitted on behalf of the Applicant

3 March 2025

1. Due to the Respondent's violation of the Applicant's rights under the Convention, the Applicant respectfully submits that pursuant to Art 41 the Court should award just satisfaction in the form of non-pecuniary damages and legal costs and expenses.
2. Further, the Applicant also respectfully request the Court to order general measures under Art 46.

1. Non-pecuniary damages

3. The Applicant claims non-pecuniary damages in the amount [REDACTED] the following reasons.
4. As detailed in his two personal statements (AS paras 1-9) and the Observation on the Law (OF section II, 2.10, OL, section II), the Applicant already experiences the adverse effects of climate change. His MS symptoms worsen with increasing temperatures. At approximately 25°C (a warm day), he requires a wheelchair for mobility. At 30°C (a hot day), he becomes fully dependent on an electric wheelchair due to heat-induced muscle weakness, rendering him unable to propel a manual wheelchair. Summers have become a time of isolation for him, a period which becomes increasingly longer with the rise in global temperature, even in his home region. Therefore, he made adjustments, such as moving to a passive house which can be kept at moderate indoor temperature levels without energy intensive cooling measures. However, further adjustments will likely be necessary in the future. Moreover, he has adapted through isolation, which is severely impacting his mental health and the relationship with his close friends.
5. Five years after filing his first claim with the Constitutional Court, his Article 8 rights remain unexamined by any court.
6. In view of the physical and mental suffering described, taking into account the absence of any procedural safeguard to effectively address the core of his claim under Art 8, as well as the Court's practice in comparable cases (references), the Applicant requests the Court to award him compensation for non-pecuniary damages in the amount [REDACTED]

2. Legal costs and expenses

7. Under the title of costs and expenses, the Applicant claims a total amount of EUR [REDACTED]. The sum comprises, on the one hand, attorney's fees [REDACTED] and, on the other, experts reports and expert support [REDACTED].
8. The Applicant substantiates this amount with the enclosed fee notes (Doc 42). The sum is justified by the complex proceedings and the extensive research required to address the novel legal and factual questions presented in this case.
9. It is noteworthy that the attorney charged [REDACTED] [REDACTED] for all legal services, which is considered low by Austrian standards. The Applicant would not have been entitled to legal aid before the Constitutional Court and therefore did not apply for it. No deductions can thus be made in this regard.
10. Given the above, the Applicant requests the Court to award full compensation for all incurred costs and expenses.

3. General Measures

11. The Applicant's case displays a procedural and substantive legislative lacuna resulting from the Respondent's failure to adopt a climate framework capable of protecting the Applicant as set out by the Grand Chamber in *KlimaSeniorinnen*. The deficiencies in the Respondent's climate regulatory framework constitute a (1) *systemic problem* and (2) the only effective remedy of preventing future violations, and of remedying the violation of the Applicant's rights, is the adoption of general measures.
12. In the following, the Applicant will set out (1) that there is a necessity for the Court to indicate general measures under Art 46 of the Convention, and (2) what those measures should entail, in light of the scientific evidence and the Court's findings in *KlimaSeniorinnen*.

3.1. The necessity for indicating general measures under Art 46 to guide the Committee of Ministers supervision of the execution of the judgment

13. Whereas the Applicant is cognisant of the Court's general approach of leaving it up to the Respondent State, under supervision of the Committee of Ministers, to determine what is required to remedy a violation – he sees reasons for the Court to “*exceptionally indicate the type of measures that might be taken*” to remedy the present violation.¹ The Applicant submits that it would be appropriate for the Court to indicate what measures the Respondent is held to take in order to remedy the violation of Art 8 of the Convention.
14. In its recent environmental case under Art 8, *Cannavacciuolo and Others v Italy*, the Court decided to indicate the measures to be taken by Italy due to the systemic nature of the problem identified. The pollution at issue in that case required Italy to devise a “*comprehensive strategy drawing together existing or envisaged measures*”.² This is equally the case in respect of the Respondent, who, as shown under in OL section V, 2 C, has wholly failed to comply with any of the criteria that the Court set out under *KlimaSeniorinnen* §§550(a)- 550(e).
15. The urgency of the matter in this case, as set out above and as acknowledged by the Court in *KlimaSeniorinnen*, is a further reason for the Court to indicate what general measures the Respondent must take. As the Court found in *KlimaSeniorinnen*, addressing the adverse effects of climate change requires immediate and decisive action grounded in “*the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility*”.³ The Court noted the “*urgency of near-term integrated climate action*”, the “*rapidly closing window of opportunity to secure a liveable and sustainable future for all*” and that “*to avoid a disproportionate burden on future generations, immediate action needs to be taken*”.⁴ Further, it acknowledged that States have a “*generally inadequate track record in taking action to address the risks of climate change*”.⁵

¹ KS [656]; *Cannavacciuolo and Others v Italy*, Appl Nos. 51567/14 and 3 others [493].

² *Cannavacciuolo and Others v Italy*, Appl Nos. 51567/14 and 3 others [494]-[498].

³ KS [434].

⁴ KS [118], [542], [549].

⁵ KS [542].

16. The evidence as submitted by the Applicant, including two expert reports on Austria's remaining GHG-emissions budget, clearly demonstrates the acute nature of this issue (see OF, section II, 2.7). As evidenced, the Respondent's 1,5°C-aligned carbon budget – even under an “*equal per capita*” approach – is due to be depleted in the course of 2025. It is clear from Kirchengast & Steininger 2025 that the Respondent's targets, as well as the emissions trajectory implied by the policy measures it has implemented or identified, are fundamentally inadequate and insufficient. Even if the Respondent were to comply with the EU targets, or its aspirational net zero by 2040 target – and the Respondent is on track to meet neither – it would still severely exceed its remaining GHG emissions limitations.
17. This issue is exacerbated by the fact that the Respondent has completely failed to enact a regulatory framework setting out the relevant carbon budget, its timeline for achieving carbon neutrality, and intermediate GHG reduction targets. The time needed to enact a compliant regulatory framework must not be extended unnecessarily because of a lack of clarity on what the Respondent's legislation and measures ought to entail.
18. The Applicant further points to the failure to submit an Action Plan in accordance with the Court's judgment in the case of *Klima.Seniorinnen* by Switzerland to remedy the Article 8 violations the Court found in this case. Instead, Switzerland submitted an action report.⁶ In this report, Switzerland submitted that it no longer needs to take any additional actions to implement the judgment, and that it suffices for it to quantify its expected emissions under its existing emissions reduction targets. It further insisted that there is no accepted methodology for deriving a national carbon budget from the global carbon budget. A number of Rule 9 submissions have set out why this approach does not align with the Court's findings.⁷

⁶ Communication de la Suisse concernant l'affaire Verein KlimaSeniorinnen Schweiz et autres c. Suisse

(requête n° 53600/20), 8 October 2024, [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)1123F](https://hudoc.exec.coe.int/?i=DH-DD(2024)1123F).

⁷ Communication from NGOs (Greenpeace International and Climate Litigation Network) (17/01/2025) in the

case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20), 27 January 2025, [https://hudoc.exec.coe.int/?i=DH-DD\(2025\)101E](https://hudoc.exec.coe.int/?i=DH-DD(2025)101E); Communication from an NGO (Verein KlimaSeniorinnen) (17/01/2025) in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20), 27 January 2025, [https://hudoc.exec.coe.int/?i=DH-DD\(2025\)100E](https://hudoc.exec.coe.int/?i=DH-DD(2025)100E); Communication from an NHRI (L'Institution suisse des droits humains)

19. This demonstrates that the Committee of Ministers would benefit from clarification regarding the types of general remedies consistent with the Court's findings in cases concerning Article 8 violations arising from a state's failure to provide an adequate legislative framework under Article 46 ECHR. Guidance by the Court to the Respondent and the Committee of Ministers on executing judgments where domestic law conflicts with Art 8 in the context of climate change obligations would both ensure compliance with Art 46 and help prevent future repetitive cases. As the Court remarked, "*the intergenerational perspective underscores the risk inherent in the relevant political decision making processes, namely that short term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy making*".⁸.
20. The Applicant therefore submits that the Court should indicate the actions required of the Respondent to remedy the violation of Art 8. The subsequent section outlines these requirements.

3.2. The general measures required of the Respondent

21. The Respondent's violation of Art 8 of the Convention, set out in OL section VI, sub-section 2, consists of:
- a. Its failure to adopt an adequate climate regulatory framework in line with *KlimaSeniorinnen*;
 - b. Its failure to set up a sufficient regulatory framework based on a quantification of a national carbon budget;
 - c. 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;
 - d. 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;

(17/01/2025) in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20), 27 January 2025, [https://hudoc.exec.coe.int/?i=DH-DD\(2025\)102E](https://hudoc.exec.coe.int/?i=DH-DD(2025)102E).

⁸ KS [420].

- e. Its failure to update its climate policies with due diligence and “*in good time*” also runs afoul of *KlimaSeniorinnen* §§ 550(d) and 550(e);
 - f. Its failure to supplement its mitigation measures with adaptation measures, and to effectively promote appropriate procedural safeguards.
22. As the Court set out in *KlimaSeniorinnen*, the Respondent’s primary duty under Art 8 in relation to climate change is “to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change.”⁹ With regard to the nature of the positive obligation to set up a regulatory framework the Court noted that it “must be geared to the specific features” of the risks that climate change poses and the scientific underpinnings that inform the creation of those risks.¹⁰ The Court further noted that for the regulations and measures to be able to ensure the “effective respect” of the rights protected under Art 8, the Respondent needs to act “in good time, in an appropriate and consistent manner”¹¹ and that for the protection to be “genuinely feasible, and to avoid a disproportionate burden on future generations, immediate action needs to be taken”.¹²
23. The Applicant has put forward undisputable scientific evidence showing that the remaining carbon budget is even smaller than was assumed at the time of its decision in *KlimaSeniorinnen*. This applies to the remaining global carbon budget, and even more so in relation to the national carbon budget that remains for the Respondent (see OF, section II, 2.7; OL section VI, sub-section 2.2 a (2)). This scientific evidence adds to the “specific features” that determine the positive obligations of the Respondent.
24. More specifically, at the time of this submission, it is unlikely that merely setting a target for the reduction of existing emissions towards achieving carbon neutrality

⁹ KS, para 545, emphasis added.

¹⁰ KS, para 547 and 549 with reference to para 107-120 and 440.

¹¹ KS, para 548.

¹² KS, para 549.

within the territory can suffice for the Respondent to remain within its national carbon budget. Especially in light of the expert evidence submitted by the Applicant revealing the carbon budget's depletion as early as in 2025.. Given the current (or at the very least imminent) depletion of the national carbon budget, measures that are merely aimed at reducing domestic emissions cannot (at least no longer) be seen as being “capable” of mitigating the harmful effects of climate change and therefore cannot in themselves provide “effective” protection.

25. As the Court noted itself in the assessment of the facts relating to climate change, the IPCC has described that temperature levels may be brought back down after the exceedance of the carbon budget by achieving and sustaining net negative global CO₂ emissions, through the additional deployment of so called ‘carbon dioxide removal’ technologies.¹³ The Court referred to the IPCC’s findings that “*improved access to adequate financial resources*”, would facilitate addressing the “*rapidly closing window of opportunity to secure a liveable and sustainable future for all*”.¹⁴ The Court, however, noted the strong warning of the IPCC against reliance on carbon dioxide removals as a means to address budget overshoot, noting that this would lead to “*greater feasibility and sustainability concerns as overshoot entailed adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot*”.¹⁵
26. In light of this scientific context, the ESABCC, in its advice on the EU 2040 target, recommended that the EU, to fulfill its Paris Agreement contribution, aim for: (1) the highest level of ambition with regards to both domestic emission reductions and carbon dioxide removals, (2) direct contributions to emissions reductions beyond the EU to address the shortfall between feasible emission reduction pathways and the EU’s “fair share” carbon budget, and (3) the pursuit of sustainable net negative emissions.¹⁶ These recommendations of the ESABCC are entirely aligned with framework under the Paris Agreement. Article 4(3) of the Paris Agreement states that countries nationally determined contributions will

¹³ KS para 117.

¹⁴ KS para 118.

¹⁵ KS para 117.

¹⁶ ESABCC, p. 10 & 15. See also para § for a further description of the ESABCC 2040 report.

reflect their “highest possible ambition”. Article 6 establishes a mechanism on the basis of which States can financially contribute to emission reductions outside of their territory to allow for higher ambition of their own mitigation actions.

27. Following from the above, the Applicant submits that the best available scientific evidence, particularly regarding carbon budget depletion, constitutes “specific features” warranting further specification of positive obligations under Article 8 ECHR in relation to climate change.

28. Accordingly, the Applicant respectfully requests the Court to indicate that the Respondent must adopt a regulatory framework which incorporates at least the following indications as to general measures under Article 46 ECHR:

- a) Determine and periodically update the remaining national carbon budget in relation to the remaining global carbon budget for 1.5C.
- b) Determine and periodically update emissions reduction pathways that aim for the highest level of ambition in domestic emission reductions and carbon dioxide removals.
- c) Adopt intermediate GHG reduction targets and pathways (by sector or other relevant technologies) towards achieving net-zero emissions that reflect the determinations made under paragraphs (a) and (b).
- d) Adopt targets for achieving and sustaining net negative emissions after achieving net-zero emissions, that reflect the determinations made under paragraphs (a) and (b).
- e) Adopt general measures, at the highest level of ambition, to mitigate any exceedance of its remaining national carbon budget under paragraph (a) as a consequence of GHG emissions attributable to it, through support for emissions reductions outside of its territory.

29. Finally, the Applicant requests that the Court set a time limit which is adequate in view of the urgency of the issues at stake for the Respondent to implement such regulatory framework – as it did in the case of *Cannavacciuolo and Others v Italy*.¹⁷

¹⁷ *Cannavacciuolo and Others v Italy*, Appl Nos. 51567/14 and 3 others [501].

30. Such general measures are necessary to enable the Committee of Ministers to verify that timely and necessary measures are taken to protect the Applicant's rights and that there is sufficient implementation of the Court's judgment in the present case. Considering the demonstrated violation of the Applicant's rights, his individual vulnerability in light of his illness and the Respondent's history of inaction, it is submitted that a failure to order these measures would likely result in a continuing violation of the Applicants' rights.

4. Summary of claims regarding remedies

31. To summarize, the Applicant respectfully requests the Court to award him just satisfaction and general measures as follows:
32. To award him [REDACTED] non-pecuniary damage;
33. To award [REDACTED] cost and expenses;
34. To adopt a regulatory framework which incorporates at least the following obligations:
- a) Determine and periodically update the remaining national carbon budget in relation to the remaining global carbon budget for 1.5C.
 - b) Determine and periodically update emissions reduction pathways that aim for the highest level of ambition in domestic emission reductions and carbon dioxide removals.
 - c) Adopt intermediate GHG reduction targets and pathways (by sector or other relevant technologies) towards achieving net-zero emissions that reflect the determinations made under paragraphs (a) and (b).
 - d) Adopt targets for achieving and sustaining net negative emissions after achieving net-zero emissions, that reflect the determinations made under paragraphs (a) and (b).
 - e) Adopt general measures to mitigate, at the highest level of ambition, any exceedance of its remaining national carbon budget under paragraph (a) as a consequence of GHG emissions that are attributable

to it, through support for direct emissions reductions outside of its territory.

35. To set a binding time-limit for the Respondent to implement such a framework which is adequate in view of paragraph (3c) above.



Yours faithfully,

Mag.^a Michaela Krömer, LL.M

Attorney-at-Law

On behalf of the Applicant

St. Pölten, 3.3.2025