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It is an unofficial English summary of the application submitted by KlimaSeniorinnen Schweiz ("Senior Women for Climate Protection Switzerland") and individual Applicants challenging the Swiss government's national climate policies and mitigation measures. The official legal application is in German and can be downloaded at: http://klimaseniorinnen.ch/wp-content/uploads/2016/10/Gesuch-um-Erlass-Verfuegung_Sperrfrist.pdf

Registered mail

The Federal Council
Schweizerische Bundeskanzlei
Bundeshaus West
3003 Bern

Federal Department of the Environment, Transport, Energy and Communications
(DETEC) Kochergasse 6
3003 Bern

Federal Office for the Environment FOEN
3003 Bern

Swiss Federal Office for Energy SFOE
3003 Bern

Zurich, 25th of October 2016

**Request to stop omissions in climate protection pursuant to Art. 25(a) APA
and Art. 6 Ziff. 1 and 13 ECHR**

Ladies and Gentlemen of the Federal Council

Ladies and Gentlemen

In the matter of

Verein KlimaSeniorinnen Schweiz, 8004 Zürich

Applicant 1

And

Applicant A

Applicant 2

And

Applicant B

Applicant 3

And

Applicant C

Applicant 4

And

Applicant D

Applicant 5

And

Applicant E

Applicant 6

(jointly "the applicants")

represented by

Dr. Ursula Brunner, attorney-at-law, and/or Marin Looser, attorney-at-law, et-
tlersuter attorneys-at-law, Grüngasse 31, Postfach 1323, 8021 Zürich 1

and/or

Cordelia Bähr, lic. iur., LL.M. Public Law (LSE), attorney-at-law,
bähr ettwein attorneys-at-law, St. Moritz-Str. 1, Postfach 46, 8042 Zürich

vs.

Federal Council, Schweizerische Bundeskanzlei, Bundeshaus West, 3003 Bern
Respondent 1

And

**Federal Department of the Environment, Transport, Energy and Communi-
cations (DETEC)**, Kochergasse 6, 3003 Bern

Respondent 2

And

Federal Office for the Environment FOEN, 3003 Bern

Respondent 3

And

regarding

discontinuation of failures in climate protection

we—acting under a mandate from and on behalf of the Applicants—request for

**a ruling be issued
pursuant to Art. 25(a) APA and Art. 6 Par. 1 and Art. 13 EHRC**

and we submit these

requests for legal remedy:

1. The Respondents shall take all necessary actions within their competence to reduce greenhouse gas emissions by 2020 to such an extent that Switzerland's contribution meets the "well-below-2-degree-C-target" for maximum allowable warming or at the very least does not exceed the 2-degree-C-target, thereby putting an end to the wrongful omissions undermining these targets.
Notably:
 - a. Respondent 1 shall examine the duties of the federal government under Art. 74 Par. 1 Federal Constitution (FC) and their fulfilment in the climate sector with the current climate goal:
 - regarding compliance with targets in Art. 74 Par. 2 FC and 73 FC and with the constitutional duty of the government to protect the individual according to Art. 10 Par. 1 FC;
 - and with Art. 2 and 8 of the European Convention on Human Rights (ECHR);and shall develop, without delay, a new solution for the period between now and 2020 that will permit Switzerland to achieve the "well-below-2-degree-C-target" or, at the very least, not exceed the 2-degree-C-target, which requires a domestic greenhouse gas reduction by 2020 of *at least* 25% below 1990 levels;
 - b. Respondent 1 shall communicate to parliament and the public

that—in order to comply with Switzerland's constitutional protections and the principles of precaution and sustainability—a reduction of greenhouse gas emissions is necessary by 2020 that allows the "well-below-2-degrees-C-target" or at the very least the "2-degrees-C-target" to be met, which requires a domestic greenhouse gas reduction of at least 25% below 1990 levels by 2020;

- c. with a decision at the level of Federal Council, department or federal office, Respondents 1,2, or 3 shall initiate, without delay, a preliminary legislative procedure for an emissions reduction target as laid out in Section 1(a); and
 - d. Respondent 1 shall inform parliament in its dispatch as stated in Section 1(c) that the proposed emissions reduction target clears the way for compliance with the Constitution and the ECHR).
2. Respondents shall take all necessary mitigation measures within their competence to meet the greenhouse gas reduction target defined in Section 1, i.e. reducing greenhouse gas emissions by at least 25% below 1990 levels by 2020, thereby putting an end to their wrongful omissions. Notably:
- a. Respondent 1 shall consider steps to achieve the target as defined in Section 1(a);
 - b. Respondent 1 shall communicate the appropriate steps to target achievement as stated in Section 1(b)
 - c. Respondents 1,2, or 3 shall include steps to achieve the target in the preliminary legislative procedure according to Section 1(c).
3. Respondents shall carry out all acts, within their competence, required to lower emissions by 2030 to such an extent that Switzerland's contribution meets the "well-below-2-degrees-C-target" or, in any event, at least the 2-degree-C-target for maximum warming, thus ending the wrongful omissions undermining these targets. Notably:
- a. Respondents 1, 2, or 3 shall, in the course of the preliminary

legislative procedures, carry out all actions that allow Switzerland to do its share to meet the "well-below-2-degrees-C-target" or, in any event, at least the 2-degree-C-target, which means a domestic reduction of greenhouse gas emissions of *at least* 50% below 1990 levels by 2030;

- b. Respondents 1, 2, or 3 shall include in the preliminary legislative procedures all necessary mitigation measures required to meet the greenhouse gas reduction target as defined in Section 3(a).

4. Respondents shall implement mitigation measures, in their competence, required to achieve the current greenhouse gas reduction target of 20%, thus ending the wrongful omissions.

Notably:

- a. Respondent 3 shall request without delay the reports of cantons detailing the technical measures adopted to reduce the CO₂ emissions from buildings;
- b. Respondent 3 shall verify that the cantonal reports include data about already taken and planned CO₂ reduction measures and their effectiveness and demonstrate that progress has been made to reduce CO₂ emissions from buildings in their territory; and require improvements if necessary;
- c. Respondent 3 shall verify that cantons are issuing state-of-the-art building standards for new and existing buildings;
- d. Respondents 1, 2 and 3 shall issue directives to cantons that fail verification as stated in Section 4(c); if necessary they shall develop and issue new state-of-the-art federal building standards for new and existing buildings;
- e. Respondent 2, having determined that the interim building sector target for 2015 was not achieved, shall examine the vulnerabilities of cantons and request for additional effective mitigation measures from Respondent 1;
- f. Respondents 1, 2, and 3 shall take steps aimed at speedily increasing the CO₂ levy on fossil fuels;
- g. Respondent 4 shall require the importers of passenger cars to submit data showing actual CO₂ emissions of passenger cars;

- h. respondent 2, having determined that the intermediate mobility sector target 2015 will likely be missed, shall immediately draft additional and effective mitigation measures and propose them to respondent 1; in particular, respondent 1 shall take actions to promote electro mobility or else demonstrate that the sectoral interim target in Art. 3 Par.2 of the CO₂ ordinance can be achieved without such promotion; and respondents 1, 2, and 3 shall take steps to raise the compensation rate for the CO₂ emission compensation from fuels;
- i. respondent 1 shall make a comprehensive assessment of the effectiveness of measures enacted under the CO₂ Act and consider whether additional measures are necessary, report the findings of the assessment to parliament and immediately initiate steps to implement the necessary measures for the period ending in 2020.

- 5. Alternatively, with regard to Sections 1, 2, 3, and 4, a determination shall be made that the respective omissions are wrongful.

as well as the following

procedural motion:

The requests for legal remedy 1 - 5 shall be enacted in a timely manner.

Statement of Grounds:

- 1. Briefly: What we demand and why we choose this path**
 - 1. The goal of this request is to stop the ongoing failure of the Swiss Confederation (Government), i.e. the Respondents are to take any and all possible steps towards a reduction of greenhouse gas emissions; their omissions are in violation of both the Constitution and the ECHR. Worded in the positive, our goal is to compel the Respondents—in the interest of safeguarding

the life and health of the Applicants—to take all necessary steps to prevent a disastrous increase of global temperatures in compliance with the federal Constitution and the ECHR. The Applicants are members of a “most vulnerable group” with regard to the effects of climate change. The claim is based on the evidence of increased health risk for older women whose life and health are more severely impacted by periods of hot weather than the health of the rest of the population. From the perspective of the Applicants, the Respondents failed and continue to fail to fulfil their protective duties found in the Constitution and the ECHR.

2. The Applicants therefore demand that the Respondents within their respective competence take a decision to stop the contested omissions and initiate any and all actions required under the Constitution and the ECHR to achieve the climate protection targets agreed under international law. The Applicants therefore request that a ruling on *real acts* [meaning acts based on federal public law that affect rights and obligations] pursuant to Art. 25(a) of the Administrative Procedure Act (APA) as well as Art. 6 Par. 1 and Art. 13 ECHR be issued.
3. On the one hand, they are formally expressing their disapproval of the insufficient current domestic emissions reduction *target* of 20% below 1990 levels by 2020, as well as the insufficient domestic emissions *target* of 30% by 2030 currently under discussion in the preliminary legislative procedures, as unconstitutional and in violation of their human rights. But on the other hand, they criticize the insufficient mitigation *measures*—not only in view of the current target for 2020, but even more strongly with regard to the elevated, as well as Constitutional- and ECHR-compliant targets for 2020 and 2030.
4. The Applicants claim that the contested omissions violate the sustainability principle (Art. 73 BV), the precautionary principle (Art. 74 Par. 2 BV), and their right to life (Art. 10 BV), and also their rights under the ECHR, notably the right to life, to health, and to physical integrity, protected in Art. 2 and Art. 8 of the ECHR. Constitutional rights and human rights are linked to positive state duties to protect, which in this instance, owing to numerous omissions, have and continue to be insufficiently carried out.
5. This request concerns civil claims and obligations pursuant to Art. 6 Par. 1 ECHR, since the contested omissions pose serious risks to the life, health,

and physical integrity of the Applicants. The Applicants are therefore entitled to have their application examined and judged (ultimately in a court of law); this applies to all Government conduct and all authorities. Art. 13 of the ECHR also provides that Applicants whose rights under the convention are violated may file an effective remedy with a national authority.

6. Based on the aforementioned articles of the ECHR, the federal court provided the opportunity for the initiation of civil legal proceedings (against real acts) even before the total revision of the federal judiciary organization, effective January 1, 2007. In order to account for the legal protection guarantee pursuant to the new Art. 29(a) BV, as well as Art. 6 Par. 1 and Art. 13 ECHR, the APA was ultimately amended by adding Art. 25(a). This provision closes a gap in the system of legal protections and shall warrant—also in terms of international law—sufficient legal protection. This is the legal protection, guaranteed by international law, that the Applicants are invoking.
7. More specifically, Applicants affected by state omissions, that are both unconstitutional and in violation of human rights, cannot be expected to wait to start legal proceedings until they actually suffered harm so that they (or their descendants) can sue the confederation over state liability issues. Art. 25(a) APA allows Applicants, if they fulfil the formal prerequisites, to contest a violation by omission of a claim to protection under the ECHR and to demand its rectification.
8. Independently of Art. 25(a) APA, Applicants can also base their claim for a decision, as well a judicial consideration, of their requests for a legal remedy on Art. 6 Par. 1 and Art. 13 ECHR—a minimal guarantee assured by the member states of the ECHR and, if necessary, safeguarded by the European Court of Human Rights (ECtHR).

2. Structure and Composition of this Legal Brief

9. The requests of the Applicants include materially disparate actions (or omissions respectively)—apart from the determination of targets there is the adoption of disparate (distinct or different?) measures—while referring procedurally to both national and international principles. The specifics of the initial situation, lines of argumentation, and documentation call for a

comprehensive explanation on the one and a specific brief structure on the other hand.

10. The legal brief is essentially structured as follows:

- Section 3 lists the formal preconditions for the submission of the request.
- Section 3.5 lists the required information about the Applicants.
- Section 4 lays out the facts of the case. Apart from the state of the science, it presents the inadequacies of Swiss climate policy (regarding reduction targets and existing mitigation measures) as well as the risk posed by warming to the Applicants.
- Section 5 lists the demands of the constitution and of international law on Swiss climate policy. Reasons are presented to explain why the CO₂ Act's emissions reduction *target* of 20% below 1990 levels by 2020, as well as the domestic reduction target of 30% in the ongoing preliminary legislation procedure fall short of what is required by the Constitution and the ECHR, and why, from the perspective of constitutional and of international law, targets of *at least 25% emission reductions* by 2020 and of *at least 50% emission reductions* by 2030 are necessary. Hand-in-hand with the insufficient reduction goals goes the fact that the current mitigation measures also fail to achieve these goals.
- Section 6 explains why and how claims concerning guarantees provided for in the Constitution and the ECHR can fall under Art. 25(a) APA, as well as, Art. 6 Par. 1 and Art. 13 ECHR.
- Section 7, explains in detail, why a ruling on real acts is needed. In Section 7.2 the broad meaning of the term real act is discussed; it includes wrongful omissions, even in the preliminary legislative process. To what extent the applicants are affected in their rights and duties, as well as in their interests deserving of protection is the subject of Sections 7.4 and 8.5.
- Section 8 lists the wrongful omissions of the respondents and looks at proposed mitigation measures to remedy the situation.

3. Concluding Remarks

11. The Applicants are concerned about their health and their well-being. Even today they are greatly affected by periods of intense heat and they dare not envision a future in which heat waves become a normal occurrence. They know they are part of a demographic that is overwhelmingly affected by periods of intense heat, and therefore have come together in an association, called Senior Women for Climate Protection (Verein KlimaSeniorinnen), to voice their concerns and those of future generations.
12. They want to be heard by a government that has failed to consider their constitutional and human rights; they want to be heard by a government that may have yielded to pressure from corporate interests, a government that has failed and continues to fail—despite mounting scientific evidence—to adopt serious emissions reduction targets for 2020 and 2030 and the mitigation measures necessary to achieve them, so that vulnerable groups like the Applicants get as much protection as the interests of business and industry; they want to be heard by an executive that knows that the 2020 targets may never be achieved but continues to neglect the protection of the Applicants.

In conclusion the Applicants ask the Respondents pursuant to Art. 25(a) APA as well as Art. 6 Par. 1 and Art. 13 ECHR, to stop the wrongful omissions detailed above and adopt, without delay, the measures requested at the outset.

Zurich, October 25, 2016

RA Dr. Ursula Brunner

RA Cordelia C. Bähr, LL.M.

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