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European Court of Human Rights
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Bratislava
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Application No. 53600/20

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

Dear Madam,

With reference to your letter of 24 October 2022, please find enclosed the written submissions of the Government of the Slovak republic as the third party on the above case.

Yours faithfully,



Miroslava Bálintová
Agent of the Government
of the Slovak republic
before the European Court of Human Rights

**OBSERVATIONS OF THE GOVERNMENT OF THE SLOVAK REPUBLIC
AS THIRD PARTY TO THE APPLICATION
VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND
(no. 53600/20)**

2022

OBSERVATIONS OF THE GOVERNMENT OF THE SLOVAK REPUBLIC
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(no. 53600/20)

I. General notes

1. The Deputy Grand Chamber Registrar of the European Court of Human Rights (hereinafter the “Court”) by letter of 24 October 2022 notified the Government of the Slovak Republic (hereinafter the “Government”) that the President of the Grand Chamber granted under Article 36 § 2 of the Convention and under Rule 44 § 3 of the Rules of Court the request of the Slovak Republic allowing them as third party to submit observations in case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20).

2. The Government as intervening third party submit within the set time limit the following observations.

II. Third party observations

3. Global warming is a global phenomenon, which represents one of the greatest challenges to mankind. Given the seriousness of the current situation and the worrying prospects for the future, there is a real urgency to the need to adopt and implement a series of effective measures to combat this phenomenon and to minimise its effects. The Slovak Republic is a party to the Paris Agreement and, as a member State of the Council of Europe and the European Union, actively participates in collective efforts to slow down global warming.

4. Regarding the rights of the individual, it is above all necessary to appreciate that the environment and environmental protection have increasingly become a concern of the international community. Although the main human rights instruments (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and those at the European level (the European Convention on Human Rights and the European Social Charter), all drafted well before full awareness of environmental issues arose, do not refer to the environment, today it is commonly accepted that human rights and the environment are interdependent even to the point that it is suggested that environmental rights belong to a “third generation of human rights”.

5. In the light of the common acceptance that has emerged of the interconnection between the protection of the environment and human rights, the Court recognised in its case-law that in today’s society the protection of the environment is an increasingly important consideration. The Court has examined complaints in which individuals have argued that a breach of one of their Convention rights has resulted from adverse environmental factors and developed a relatively extensive jurisprudence concerning partial issues in the area of the environment.

6. The application *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is specific in that it raises questions of a relatively general nature and concerns a wide group of affected persons – elderly women. The applicants complain that climate change is having an impact on their living conditions and health. They allege *inter alia* that the State’s positive obligations under the Convention should be considered in the light of the principles of precaution and intergenerational fairness contained in international environmental law.

7. The Government are of the view that the application raises several important issues. The Government as *amicus curiae* will not comment the application complexly. They however submit before the Court some notes to partial legal questions arising in the case and impacting the interpretation and application of the Convention, in particular in relation to the objected violations of the right to life and the right for respect of private and family life.

Direct liability of the State for the violation of the rights of the individual due to climate change

8. In the first line, neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such (*Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003 VI (abstracts)). In the Court’s view, decisive element enabling the determination whether under certain circumstances of the case one of the rights guaranteed in Article 8 § 1 of the Convention was violated by damaging the environment is the existence of an unfavourable impact on the private or family sphere of the individual and not only a general degradation of the environment (*Fadejeva v. Russia*, no. 55723/00, § 88, ECHR 2005 IV).

9. The Government point in this regard to the contribution of the 2nd assessing group to the 6th Assessment report of the Intergovernmental panel for climate change¹ (hereinafter the “IPCC”) on the impacts, mitigation and vulnerability in the sphere of climate change, published in February 2022. This partial report analyses in detail the unfavourable impacts of climate change on human health by assessing the extent of impact using calibrated language (the level of reliability of scientific evidence expressed five qualifiers: very low, low, middle, high and very high), stating that “*human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. (...) Across sectors and regions, the most vulnerable people and systems are observed to be disproportionately affected. Climate change has adversely affected physical health of people globally (very high confidence) and mental health of people in the assessed regions (very high confidence). Climate change impacts on health are mediated through natural and human systems, including economic and social conditions and disruptions (high confidence). In all regions extreme heat events have resulted in human mortality and morbidity (very high confidence). The occurrence of climate-related food-borne and water-borne diseases has increased (very high confidence). The incidence of vector-borne diseases has increased from range expansion and/or increased reproduction of disease vectors (high confidence). (...) In assessed regions, some mental health challenges are associated with increasing temperatures (high confidence), trauma from weather and climate extreme events (very high confidence), and loss of livelihoods and culture (high confidence). Increased exposure to wildfire smoke, atmospheric dust, and aeroallergens have been associated with climate-sensitive cardiovascular and*

¹ https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf

respiratory distress (high confidence). (...) In urban settings, observed climate change has caused impacts on human health, livelihoods and key infrastructure (high confidence). Multiple climate and non-climate hazards impact cities, settlements and infrastructure and sometimes coincide, magnifying damage (high confidence). Hot extremes including heatwaves have intensified in cities (high confidence), where they have also aggravated air pollution events (medium confidence) and limited functioning of key infrastructure (high confidence). Observed impacts are concentrated amongst the economically and socially marginalized urban residents, e.g., in informal settlements (high confidence)” (see SPM.B.1., SPM.B.1.4 and SPM.B.1.5 of the report). Essential are the findings of evaluation group that “vulnerability of ecosystems and people to climate change differs substantially among and within regions (very high confidence), driven by patterns of intersecting socio-economic development, unsustainable ocean and land use, inequity, marginalization, historical and ongoing patterns of inequity such as colonialism, and governance (high confidence). Approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change (high confidence). (...). Vulnerability at different spatial levels is exacerbated by inequity and marginalization linked to gender, ethnicity, low income or combinations thereof (high confidence), especially for many Indigenous Peoples and local communities (high confidence). Present development challenges causing high vulnerability are influenced by historical and ongoing patterns of inequity such as colonialism, especially for many Indigenous Peoples and local communities “(see SPM.B.2 of the report). Regarding the vision for the future, the report states that “globally, population exposure to heatwaves will continue to increase with additional warming, with strong geographical differences in heat-related mortality without additional adaptation (very high confidence). Climate-sensitive food-borne, water-borne, and vector-borne disease risks are projected to increase under all levels of warming without additional adaptation (high confidence). (...) Mental health challenges, including anxiety and stress, are expected to increase under further global warming in all assessed regions, particularly for children, adolescents, elderly, and those with underlying health conditions (very high confidence)” (see SPM.B.4.4 of the report).

10. It is obvious from the noted assessment of the IPCC workgroup the climate change has or will with high probability have an impact on the entire mankind, whereas vulnerable groups create almost half of the population. The change of quality of life resulting from climate conditions represents a new state of affairs for humanity and a call for joint action. This very aspect fundamentally distinguishes the case from elder above noted cases related to individuals concerned by concrete aspects of deterioration of the environment at a specific place.

11. The Government assume the it is not possible to interpret the term victim in sense of Article 34 of the Convention so broadly that his adherence to a potentially vulnerable group is sufficient to define the vulnerability and threat of a specific individual without duly assessing the concrete circumstances and specific life conditions of the given person and the place. Imbalance of life conditions arises or may arise along social groups, often also under new criteria, cumulating diverse geographic, socio-economic and other factors. In case of *Cordella and Others v. Italy* (cited above, §§ 106, 164, 166) the Court found it significant that the applicant demonstrably lived in an area of “high environmental risk” and in particular that in such area the mortality and rate of hospitalisations for certain diagnoses was higher than the regional average whereas the source of origin of such complaints clearly emerged from scientific studies. Such situation enabled to define the directly impacted group, including the one liable for the deterioration of environment. To deduce from statistical data, according to which women and elder people are threatened by climate change more than the average of population, their potential to become victims of violation of the right to a favourable environment would be highly inaccurate and would bring about the risk of an unaddressed possible verdict of the Court. Similarly inaccurate and generalizing would be the

conclusion on the violation of the rights of the individual in result of a simple conclusion about the deterioration of life circumstances of a summary of inhabitants of a State as a result of the increase of the heat average in the responding State, no matter how it must be admitted that warming brings about such deterioration to the inhabitants of the planet.

12. The level of threat is not quite clear either, the same as the prognosis of impact of climate change on the life of a concrete individual. In April 2022 the 3rd IPCC workgroup in their contribution to the mitigation of climate change to the 6th Assessment report on climate change presented a few climate scenarios where the extent of warming varies from a warming by up to 1,5°C in 2100 to a warming by more than 4°C during the 21st century² depending on the adopted mitigating measures in the entire world. Then noted testifies to the impossibility to clearly estimate the extent of deterioration of life quality of the specific individual.

13. To determine the liability of the specific State it is however necessary to demonstrate the direct causal link between the deterioration of life circumstances of the individual and the action or inactivity of the given State. This however is impossible in case of warming of the Earth. Important factor for the assessment of the liability of the State is the extent of its contribution to the current situation. Global warming impacts the Earth as a whole but in diverse fields it may manifest in diverse intensities. It is an inhomogeneous phenomenon – North and South poles warm faster than the equatorial regions whereas continents warm faster than the oceans. Moreover, the assessment of liability is made more difficult also by the fact the perception of its level changes depending on the selected criteria, such as the volume of emissions per inhabitant, country, current emissions, historical summary, etc. With regard to these facts, the global nature of emission of greenhouse gases, as well the historically conditioned amount of greenhouse gases in the Earth atmosphere currently, it cannot clearly be quantified the extent of contribution of the respective State on climate change or global warming or establish precisely to what extent the respective State contributed to the current state of climate or further changes thereof.

14. At the same time, it is necessary to mention that also natural persons contribute to global warming by their activities or their way of life. Natural persons contribute to global warming by their activities and way of life directly mainly by burning fuel, using electricity, warmth and so on, as well indirectly, when using products, the life cycle of which requires from their production until liquidation use of energy by the producing, supplying and waste chains. To understand and establish the impact of the person on climate the artificially created indicator – the so-called carbon footprint may be used. However, the carbon footprint cannot ever be calculated absolutely precisely due to insufficient knowledge and data about the cooperation of contributing processes, including the impact of natural processes where CO₂ is stored or released, or other glasshouse gases. The extent of impact of the individual on climate change or global warming is therefore impossible to quantify regardless of them pursuing activities subject or not subject to State regulation. However, also natural persons encountering the impact of climate change and complaining of such impacts, in particular natural persons in developed countries, contribute themselves to global warming to a certain extent.

² https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf

15. Upon the aforesaid facts it may be concluded that although it is of key relevance in the interest of slowing down the ongoing changes for each State to join the common effort to slow down changes and it is obvious that the emissions of glasshouse gases of a specific State impact the global climate situation and thus the life conditions of mankind, it must at the same time be added that those do directly and concretely not impact life circumstances of specific persons in the given State. To establish thus the direct liability of a State for the state of climate and living conditions of the inhabitants resulting from the climate would not correspond to any truth or scientific knowledge and could finally lead to injustice and weakening of trust in the mechanism of the Convention.

16. Despite of the seriousness of the climate change topic and the manifold impacts thereof on human rights the fundamental principles of the Convention must be regarded, protecting human rights in the countries of the Council of Europe, being thus a regional international treaty. The Convention should not be any basis for determining liability, belonging to a global society as such. The mechanism of the Convention is no proper forum for the assessment of State activities in the field of resolving question of climate change in their global standard.

Margin of appreciation of the State in area of policies to mitigate climate change

17. The Government do not doubt that the risks connected to climate change in result of global warming are present and impact the quality of lives of individuals. However, humanity seeks to resolve the complex phenomenon of climate warming at all social levels. Creating respective State policies in the field of climate protection is therefore a necessary set of obligations against the international community at several levels (within the UN, Council of Europe, European Union), and national obligations established by national legislations. It is necessary for each State, however small, to adjust its policies to the common aim of mitigation of climate change. Diversity in geographic and climate conditions, industry composition, contribution of agriculture to the economics, composition and layout of inhabitants, economical level and several other factors however do not enable to carry out measure to slow down global warming in a uniform way. The States must therefore seek the best ways and balance between the inevitability of necessary measures and their acceptability by the public. It must be remembered that to attain the common aim of decreasing emissions of greenhouse gases and slowing down the Earth warming requires joint efforts not only by the international community but also cooperation of all parts of the society on State level. In order for the adopted rules to work, they must be widely understood and applied by businesses, civic society and the individuals as each of them has the own task, impact on the overall outcome, but also constant education, communication and inclusive cooperation of domestic authorities with the private sector and civic society. Therefore, the States are in a better position in regard of environmental protection than the Court is to assess the appropriateness of measures depending on concrete circumstance and socio-economic and other factors in the given State, as well in relation to their international obligations.

18. The Government therefore assume that for such purpose it is necessary in the field concerned by the submitted application that the States maintain a wide margin of appreciation.

In Bratislava, 1 December 2022



Miroslava Bálintová

Agent of the Slovak Republic before the
European Court of Human Rights