Federal Administrative Court [of Switzerland], Section 1

Judgment A-2992/2017 of 27 November 2018

Verein KlimaSeniorinnen Schweiz et al. v. Federal Department of the Environment, Transport, Energy and Communications (DETEC)

Ruling on real acts relating to climate protection

Unofficial translation prepared on behalf of *KlimaSeniorinnen*

Explanatory notes

Case history

The association (*Verein*) *KlimaSeniorinnen Schweiz* as well as four individual women filed a request on 25 November 2016 for issuance of a ruling on real acts in terms of Art. 25a (1) (a) APA for discontinuation of omissions in climate protection.[1] The request was addressed to four administrative authorities which had been identified as having failed to fulfill their obligations: the Federal Council, as the highest executive body; DETEC, as the department responsible for the protection and preservation of natural resources and protection against natural hazards; and finally two of DETEC's subordinate administrative units, the Federal Office for the Environment (FOEN) and the Swiss Federal Office of Energy (SFOE). DETEC responded to the request on behalf of the other three respondents. In its 25 April 2017 ruling,[2]

[1] See <http://klimaseniorinnen.ch/wpcontent/uploads/2017/05/request_KlimaSeniorinnen.pdf> for an unofficial English translation of the request.
[2] See <http://klimaseniorinnen.ch/wpcontent/uploads/2017/11/Verfuegung_UVEK_Abschnitt_C_English.pdf> for an unofficial translation of DETEC's reasons.

DETEC denied standing, alleging the applicants' rights had not been affected as required by Art. 25a APA, and did not enter into the case.

In May 2017 the senior women appealed to the Federal Administrative Court. The judgment issued by the Federal Administrative Court on 27 November 2018 is in response to that appeal.

The 30-day period for appeal is extended because of the court recess for the holidays; an appeal must be submitted by 21 January 2019.

English terminology

The following terminology is used in the present translation of the judgment issued by the Federal Administrative Court:

In the first instance, *KlimaSeniorinnen Schweiz* and the four individual women were the **applicants**; they filed a **request** in which they made demands. DETEC issued a **ruling**.

In the second instance, *KlimaSeniorinnen Schweiz* and the four individual women were the **appellants**; they filed an **appeal** with the Federal Administrative Court, which issued a **judgment**. From the perspective of the second instance, DETEC served as the **authority of first instance** (it is not called the "lower court" or "court of first instance" since DETEC is not a court).

The term **Convention law** refers to the European Convention on Human Rights.

In the German version of APA, Art. 48, which concerns standing, reads "*Zur Beschwerde ist berechtigt: ... wer durch die angefochtene Verfügung* ***besonders berührt*** *ist ...*" The official French version uses the terms "*spécialement atteint*," the official Italian version "*particolarmente toccato*." Whereas "*besonders berührt*" is translated as "specifically affected" in the Swiss government's unofficial translation into English,[3] the translators of the present judgment decided to use "**particularly affected**."

[3] https://www.admin.ch/opc/en/classified-compilation/19680294/index.html

Abbreviations

English		German	
APA	Administrative Procedure Act	VwVG	Verwaltungsverfahrensgesetz (SR 172.021)
Art.	Article	Art.	Artikel
BGE	(Published) decisions of the Federal Supreme Court of Switzerland	BGE	(Publizierte) Bundesgerichts-entscheidungen
BGer	Federal Supreme Court, (unpublished) judgments of the Federal Supreme Court	BGer	Bundesgericht, (nicht publizierte) Bundesgerichts-entscheidungen
CO_2 Act	Federal Act on the Reduction of CO_2 Emissions	CO_2-Gesetz	Bundesgesetz über die Reduktion der CO_2-Emissionen (SR 641.71)
CO_2 Ordinance	Ordinance on the Reduction of CO_2 Emissions	CO_2-Verordnung	Verordnung über die Reduktion der CO_2-Emissionen (SR 641.711)
Const.	Federal Constitution of the Swiss Confederation	BV	Bundesverfassung der Schweizerischen Eidgenossenschaft (SR 101)
DETEC	Federal Department of the Environment, Transport, Energy and Communications	UVEK	Departement für Umwelt, Verkehr, Energie und Kommunikation
DFAC	(Published) decision(s) of the Federal Administrative Court	BVGE	(Publizierte) Bundesverwaltungsgerichts-entscheid(e)
E.	Considerations	E.	Erwägungen
ECHR	European Convention on Human Rights	EMRK	Europäische Menschenrechts-konvention
ECtHR	European Court of Human Rights	EGMR	Europäischer Gerichtshof für Menschenrechte
FAC	Federal Administrative Court (unpublished judgments of the Federal Administrative Court)	BVGer	Bundesverwaltungsgericht, (nicht publizierte) Bundesverwaltungsgerichts-entscheide
FACA	Federal Administrative Court Act	VGG	Verwaltungsgerichtsgesetz (SR 173.32)

FOEN	Federal Office for the Environment	BAFU	Bundesamt für Umwelt
FSCA	Federal Supreme Court Act	BGG	Bundesgerichtsgesetz (SR 173.110)
GAOA	Government and Administration Organisation Act	RVOG	Regierungs- und Verwaltungs-organisationsgesetz
MeteoSwiss	Federal Office of Meteorology and Climatology	MeteoSchweiz	Bundesamt für Meteorologie und Klimatologie
OV-UVEK	Ordinance on the Organisation of the Federal Department of the Environment, Transport, Energy and Communications	OV-UVEK	Organisationsverordnung für das Eidgenössische Departement für Umwelt, Verkehr, Energie und Kommunikation (SR 172.217.1)
SFOE	Swiss Federal Office of Energy	BFE	Bundesamt für Energie
SR	Classified compilation of federal legislation	SR	Systematische Sammlung des Bundesrechts
VGKE	Rules on Costs and Compensation before the Federal Administrative Court	VGKE	Reglement über die Kosten und Entschädigungen vor dem Bundesverwaltungsgericht (SR 173.320.2)

Federal Administrative Court

Section 1

A-2992/2017

Judgment of 27 November 2018

Composition of the court	Judge Christoph Bandli (presiding), Judge Claudia Pasqualetto Péquignot, Judge Jérôme Candrian, Court clerk Benjamin Strässle-Kohle.
Parties	1. ***Verein KlimaSeniorinnen Schweiz***, 8004 Zürich, 2. Appellant **A. Z.**, 3. Appellant **B. Y.**, 4. Appellant **C. X.**, 5. Appellant **D. W.**, all represented by Dr. iur. Ursula Brunner, attorney-at-law, and/or Martin Looser, attorney-at-law, ettlersuter Rechtsanwälte, Grüngasse 31, P.O. Box 1323, 8021 Zurich 1, and/or lic. iur. Cordelia Bähr, LL.M., bähr ettwein attorneys-at-law, Ekkehardstrasse 6, P.O. Box 46, 8042 Zurich, appellants,

against

Federal Department of the Environment, Transport, Energy and Communications (DETEC),
Bundeshaus Nord,
3003 Bern,
authority of first instance.

Object

Ruling on real acts relating to climate protection.

Facts of the case:

A.

In their written submission of 25 November 2016, the *Verein* [Association] *KlimaSeniorinnen Schweiz*, Zurich, as well as four women (hereinafter: applicants) addressed the Federal Council, the Department of the Environment, Transport, Energy and Communications (DETEC), the Federal Office for the Environment (FOEN) and the Swiss Federal Office for Energy (SFOE). The applicants criticized various omissions in the area of climate protection and requested the issuance of a ruling on real acts concerning this matter in terms of Art. 25a Administrative Procedure Act (APA, SR 172.021).

The applicants argued, in summary, that in any case a global temperature increase of more than 2°C over pre-industrial times means uncontrollable, dangerous and irreversible climate change. They claim that climate change of this kind involves, in particular, extreme weather events such as heat waves and droughts. The applicants argue that Switzerland has committed itself under national legislation and international law to limit the global temperature increase to at most 2°C or well below this value. This target can be reached, they allege, only through a strong and immediate reduction and, ultimately, the total avoidance of net emissions of anthropogenic greenhouse gases. To this end, they claim, with regard to the precautionary principle and with a view to the globally remaining climate budget, industrialized countries such as Switzerland would have to reduce their greenhouse gas emissions by 25 to 40% as early as the year 2020, and not, as stipulated in Art. 3 (1) of the Federal Act on the Reduction of CO_2 Emissions (CO_2 Act, SR 641.71), by merely 20% compared to 1990. In addition, by 2030 a reduction of greenhouse gas emissions by at least 50% would be necessary, and not, as proposed in the context of the legislative proceedings, just 30%.

They claim that even today, global warming is affecting older persons, a population group that is vulnerable in any case, and thus also the applicants: the risks of heat-related death as well as impairment of health and well-being due to the more frequent occurrence of heat waves are considerably higher for older women over 75 years of age than for the rest of the population. In the applicants' opinion, Switzerland is violating its state obligation to protect under constitutional and Convention law by not sufficiently reducing its greenhouse gas emissions.

The applicants demand that the federal authorities addressed discontinue omissions within their respective areas of responsibility and that they arrange for all actions required in order to limit

the global temperature rise to a value of well below, or at most, 2°C. They demand that the reduction target in terms of Art. 3 (1) CO_2 Act be corrected and preliminary legislative proceedings on this matter be initiated, with the goal of incorporating in legislation an emissions reduction target conforming to the Constitution, national legislation and international law. The Federal Council, they say, is to adequately inform the legislature and the public about the necessity of a reduction target of at least 25% by 2020. They demand that in order to achieve this goal, the necessary measures to reduce emissions be undertaken, such as promoting electromobility, enacting building standards and introducing a CO_2 levy on motor fuels; the agricultural sector must also be included. Moreover, they request that preliminary legislative proceedings be initiated, and that a reduction target of at least 50% for the year 2030 compared to 1990 as well as the measures necessary to achieve this be proposed and recommended. Finally, they demand that the measures and duties to act already stipulated by law today be implemented systematically in order to achieve the reduction target established by law by 2020. The applicants state that these include, for instance, the obligation for cantons to prepare annual reports about their measures to reduce the CO_2 emissions from buildings and to enact building standards; additional measures in the event of failure to achieve the interim building sector target, including raising the CO_2 levy on thermal fuels; measures to ensure measurement of the actual CO_2 emissions of new vehicles; measures to reduce the CO_2 emissions of vehicles in the event of failure to achieve the interim target in the transport sector, such as promoting electromobility and increasing the compensation rate for CO_2 emissions from motor fuels. The effectiveness of the measures, they demand, is to be assessed. If necessary, they argue, DETEC must propose additional effective measures to the Federal Council. They demand that, in the event that it is no longer possible to remedy the unlawful situation, the unlawfulness of the omissions on the part of the authorities be confirmed.

B.

In its ruling of 25 April 2017, DETEC first remarked on the bases, the development, and the current state of Swiss climate policy, and then denied the assertion that Switzerland was not engaging in stringent climate policy. It referred to the current CO_2 Act being increasingly based on regulatory and economic instruments rather than on voluntary measures. Despite continued population growth and predominantly positive economic development, the measures adopted had made an impact, although the reductions had been lower than hoped for. This applied particularly to the transport sector, in which the reduction targets were missed by a wide margin,

due especially to the increasing kilometers traveled. DETEC acknowledged further need for action in the building sector as well. Yet, DETEC argued, it had to be taken into consideration that many of the instruments had been in force for only a few years, so that experience had to be gained first. The various instruments and the measures implemented had been evaluated for their effectiveness in accordance with the statutory mandate, and the recommendations made had already been implemented or would contribute to further improvements in the future. Whether the interim targets and ultimately the reduction target for 2020 would be met could not yet be assessed conclusively. In any case, however, DETEC claimed that the first package of measures in the federal Energy Strategy would make a noticeable contribution to reducing greenhouse gas emissions. Should it be impossible to reach the reduction target set for 2020, the reduction measures would have to be intensified by 2030. The long-term goal remained a reduction of greenhouse gas emissions by 70 to 85% by the year 2050.

DETEC claimed that the applicants were demanding that the administrative bodies addressed draft legislative measures for a further reduction of CO_2 emissions or take charge of steps to prepare such legislative measures. Their demands were therefore aimed at general, abstract regulations and communications being issued, and in this sense at the general public being protected. Legal requests of this kind, however, could not be the object of a ruling in terms of Art. 25a APA; individual legal positions were not affected. In terms of Convention law, too, the applicants' request amounted to an inadmissible *actio popularis*, for which reason the authorities were not to enter into the matter.

C.

In their written submission of 26 May 2017, the applicants (subsequently: appellants) lodged an appeal with the Federal Administrative Court against the ruling of DETEC (subsequently: authority of first instance) of 25 April 2017. They requested that the contested ruling be overturned and the matter be remanded to the authority of first instance for a material decision.

The appellants again referred to the scientifically necessary emission reduction targets. The reduction targets by 2020 stipulated in the CO_2 Act and those proposed by the Federal Council for the period up to 2030 clearly fell short of what would be required by a large margin, they argued. Moreover, they claimed that the emission reduction measures to date were insufficient. Switzerland would clearly miss even the reduction target for 2020, which in any case had already been set too low. This would contribute to further increasing the probability of heat

waves. Women over 75, and thus the appellants, would be affected to a particular degree in terms of mortality and health impairments. Consequently, the request could not be termed an inadmissible *actio popularis*. On the contrary, the appellants had an interest worthy of protection in the issuance of a ruling concerning the contested omissions. Moreover, they argued, legal positions worthy of protection arose from Convention law and fundamental rights as well as from the purpose of the CO_2 Act, such that the rights of the appellants were affected by the contested omissions. And finally, contrary to the view of the authority of first instance, they were not demanding the issuance of general, abstract regulations, but rather actions in the context of preliminary legislative proceedings as well as the correct execution and thus the actual implementation of current law. These actions, they argued, were not directed primarily toward the regulation of rights and obligations, and thus would fall within the scope of Art. 25a APA. The authority of first instance had violated the guarantee of access to justice and thus, it had unjustly not entered into the appellants' demands. Moreover, it had violated their right to be heard by not entering into their detailed grounds and especially their pleadings based on Convention law in the written submission of 25 November 2016.

D.

With its response of 29 June 2017, the authority of first instance requested [the Federal Administrative Court] to dismiss the appeal; for grounds, it referred to the contested ruling of 25 April 2017.

E.

In their written submission of 10 July 2017, the appellants abstained from submitting closing remarks.

F.

Further arguments presented by the parties involved as well as the documents on file, provided that these are of significance for the decision, will be entered into in the considerations below.

The Federal Administrative Court takes into consideration:

1.

1.1 According to Art. 31 Federal Administrative Court Act (FACA, SR 173.32), the Federal Administrative Court adjudicates appeals against rulings in terms of Art. 5 APA provided that such rulings have been issued by an administrative authority in terms of Art. 33 FACA and no grounds for exclusion exist in terms of Art. 32 FACA.

The authority of first instance did not enter into the matter of the appellants' demands. Such a decision not to enter into demands in terms of Art 25a (1) APA is also considered to be a ruling (Art. 5 (1) c in conjunction with Art. 25a (2) APA). Since, moreover, no grounds for exclusion exist in terms of Art. 32 FACA and DETEC has issued a ruling as the authority of first instance in terms of Art. 33 (d) FACA, the Federal Administrative Court is competent to adjudicate the appeal. The procedure follows the APA provided FACA does not stipulate otherwise (Art. 37 FACA).

1.2 According to Art. 48 (1) APA, any person has the right to file an appeal who has participated in the proceedings before the authority of first instance, is particularly affected by the contested ruling and has an interest worthy of protection in the revocation or amendment of the ruling.

The appellants are addressees of the contested ruling in which the authority of first instance did not enter into the matter. Therefore, as private persons, appellants 2-5 have an interest worthy of protection in the revocation of the contested ruling and the referral of the matter back to the authority of first instance for a material ruling and are therefore clearly entitled to file this appeal. Because of this, it need not be decided whether, within the scope of an appeal brought by an association in its own name but in the interests of its members (*egoistische Verbandsbeschwerde*), appellant 1 was entitled to file a request with the authority of first instance and is now entitled to file an appeal (cf. judgment FAC A-5990/2014 of 8 June 2015 E. 1.2.2 with references).

1.3 Also, the appeal was submitted within the correct period and in the correct form (cf. Art. 50 (1) and Art. 52 (1) APA), which means that, subject to the reservations raised above (cf. E. 1.2), the court must consider the case. The object of the dispute is limited to the question as to whether the authority of first instance was incorrect in denying the existence of prerequisites

for entering into the matter and, consequently, whether the authority of first instance would have had to enter into the matter of the appellants' case (cf. judgment BGer 1C_108/2008 of 3 March 2009 E. 1.2; further MOSER, BEUSCH AND KNEUBÜHLER, Prozessieren vor dem Bundesverwaltungsgericht, 2nd ed. 2013, margin number 2.164 with references to case law).

2.

In principle, the Federal Administrative Court adjudicates cases with unrestricted cognition and reviews the contested ruling for violations of the law – including incorrect and incomplete determination of the legally relevant facts of the case and legal errors in the exercise of discretionary powers – and for adequacy (Art. 49 APA). The Federal Administrative Court also establishes the legally relevant facts of the case *ex officio*, provided the parties fulfill their obligation to cooperate (Art. 12 and Art. 13 APA) and as a matter of principle applies the law freely and *ex officio*, without being bound by the legal arguments of the parties' demands (Art. 62 (4) APA).

3.

3.1 First, the appellants' criticism must be examined that the authority of first instance did not give sufficient grounds on which its decision was based, thus violating the appellants' right to be heard.

3.2 According to Art. 35 (1) APA written rulings must state the grounds on which they are based. The obligation [of the authority] to state grounds is part of the right [of the appellants] to be heard. This right is enshrined in Art. 29 (2) Const. and requires, as a right [of the parties] to cooperate, which is related to the construct of personality, that the authority actually hears and examines the pleadings of the parties and takes them into consideration in reaching its decision. Moreover, the obligation to give grounds makes it possible for the authority to self-monitor and prevents it from being led by extraneous considerations (cf. judgments FAC A-2366/2018 of 24 May 2018 E. 4.1 and, in depth, A-1251/2012, 15 January 2014 E. 6.3.3 with references).

The grounds for a ruling normally comprise a presentation of the legally relevant facts of the case followed by their subsumption under the relevant provisions of law. The grounds must, as a minimum requirement, in any case be written in such a way that the affected person can

comprehend the full range of their implications and is able properly to appeal against them. Moreover, the appellate court or the appellate authority must be able to review how the law has been applied. The considerations which guided the authority and on which it based its ruling must be set out, at least in brief (BGE 137 II 266 E. 3.2; cf. also judgment BGer 6B_1053/2015 of 25 November 2016 E. 5.2 with references). Which requirements must be satisfied by the grounds must be determined on a case-by-case basis in the light of the specific circumstances and the interests of the affected persons. According to case law, the density of the grounds depends especially on the severity of the infringement, the pleadings of the parties involved in the proceedings and the complexity of the facts of the case and of the legal questions raised. The grounds must satisfy enhanced requirements in cases with severe infringements of the legal position of the individual and for decisions using discretionary powers (cf. judgments FAC A-1251/2012 of 15 January 2014 E. 6.2 and A-1239/2012 of 18 December 2013 E. 4.2, both with references to case law and the literature; UHLMANN AND SCHILLING-SCHWANK, in Praxiskommentar VwVG, 2nd ed. 2016, Art. 35 margin numbers 18 and 20 et seq.).

3.3 In the contested ruling, the authority of first instance essentially held that the appellants were requesting that general and abstract regulations be enacted and that they were not affected in their individually protected legal positions. Moreover, according to the authority of first instance, their requests were directed at protecting the general public and were therefore to be regarded, also in terms of Convention law, as inadmissible *actio popularis*, for which reason they did not have the right to have a material ruling in terms of Art. 25a (1) APA issued concerning their claims.

Compared to the appellants' pleadings, the grounds stated by the authority of first instance are brief and general. A subsumption of the legally relevant facts of the case under Art. 25a APA and, in particular, under the prerequisites that rights and obligations be affected and that an interest worthy of protection exists, is largely lacking. Nonetheless, the grounds must be regarded as sufficient in the present case. It was apparent to the appellants, who had legal representation, that the authority of first instance held the view that their requests were being made predominantly in respect of public interests and that the connection to their own interests worthy of protection was not sufficiently close, which is why the authority of first instance took the view that their demands were to be qualified as inadmissible *actio popularis*.

Hence, the authority of first instance stated the principal considerations which guided it, and the appellants were in a position to appeal against the ruling properly. In this respect, the

authority of first instance did not violate its obligation to state its grounds and therefore did not violate the appellants' right to be heard.

4.

The appellants criticize various omissions in the area of climate protection and requested of the authority of first instance, the Federal Council and two federal offices that they take more far-reaching measures to reduce greenhouse gas emissions and to initiate the legislative proceedings necessary to this end. They base their demands primarily on Art. 25a APA regarding rulings concerning real acts. Moreover, they invoke provisions of Convention law from which they likewise claim that a right to adjudication by an independent and neutral court is derived.

Art. 25a APA is titled "Ruling on real acts" and is intended to subject to judicial review matters in which government action, although not primarily aimed at regulating rights and obligations, nevertheless affects rights and obligations (so-called "real acts"). This article is to be seen within the context of the guarantee of access to the courts under Art. 29a Const. whose implementation it is intended to ensure in the area of real acts (BGE 144 II 233 E. 4.1, 4.4 and 7.3.1; BGE 140 II 315 E. 4.4; cf. also BGE 130 I 369 E. 6.1; also HÄFELIN, MÜLLER AND UHLMANN, Allgemeines Verwaltungsrecht, 7th ed. 2016, margin numbers 1425-1428; BERNHARD WALDMANN, in Basler Kommentar zur BV, 2015, Art. 29a margin number 12; furthermore BGE 128 I 167 E. 4.3). In turn, the guarantee of access to the courts in terms of Art. 29a Const. serves to enshrine and extend in constitutional law the right to court adjudication previously established in criminal and civil cases by Art. 6 (1) ECHR; in this respect, incorporation of the right to access to the courts in the catalogue of fundamental rights covered by the Constitution amounts to adoption of the pertinent case law of the European Court of Human Rights (ECtHR) (ANDREAS KLEY, in St. Galler Kommentar zur BV, 3rd ed. 2014, Art. 29a margin numbers 3 and 41; WALDMANN, loc. cit., Art. 29a margin numbers 2, 5 and 7).

Against this background, the basis of the claim must first be considered in terms of administrative law and the question must be examined as to whether the appellants have a right to the issuance of a material ruling on the basis of Art. 25a APA, that is, whether the authority of first instance would therefore have been obliged to enter into the matter of the appellants' requests (cf. E. 5-7 below). If it should result that the authority of first instance was correct in

denying such a right on the basis of Art. 25a APA, it must then be examined in a second step whether a more far-reaching right to effective legal protection exists under Convention law (see E. 8 below).

5.

5.1 The appellants addressed their request for issuance of a ruling concerning real acts to the Federal Council, to the authority of first instance, and to two federal offices, whereby (in accordance with the request) the authority of first instance alone issued a ruling.

Requests for issuance of a ruling concerning real acts are to be addressed to the agency responsible for the matter, and the actions must be based on public federal law. The Federal Administrative Court reviews these prerequisites for a judgment in the matter *ex officio* (cf. judgment FAC A-4941/2014 of 9 November 2016 E. 1 with references). Therefore, the material legislation applicable in the present matter, and related to this, the question of material competence to issue rulings (concerning real acts) are to be examined first in the following.

5.2 The present matter concerns actions and/or omissions relating to federal legislation regarding CO_2.

According to the purpose of the CO_2 Act, greenhouse gas emissions, and in particular CO_2 emissions that are attributable to the use of fossil fuels (thermal and motor fuels) as energy sources, are to be reduced with the aim of contributing to limiting the global rise in temperature to less than 2°C (Art. 1 (1) CO_2 Act). In order to reach this goal, Art. 3 (1) sentence 1 CO_2 Act defines an overall reduction target according to which Switzerland's greenhouse gas emissions must be reduced overall by 20% as compared with 1990 levels, by 2020. The Federal Council then defined various sector-specific interim targets (Art. 3 (1) Ordinance on the Reduction of CO_2 Emissions [CO_2 Ordinance, SR 641.711] in conjunction with Art. 3 (1) sentence 2 CO_2 Act). If a sector-specific interim target is not achieved, the authority of first instance, after hearing the cantons and affected parties, shall request the Federal Council to enact additional measures (Art. 3 (2) CO_2 Ordinance) or – for the thermal fuels sector – the CO_2 levy is automatically increased (Art. 94 (1) CO_2 Ordinance in conjunction with Art. 29 CO_2 Act).

The CO_2 Act provides for various measures for achieving the reduction target. They include first of all technical measures to reduce CO_2 emissions in the sectors buildings (enacting standards for new and older buildings by the cantons, combined with a requirement to report to

the FOEN; Art. 9 CO_2 Act in conjunction with Art. 16 CO_2 Ordinance) and transport (overall targets for the CO_2 emissions of all passenger cars registered for the first time in Switzerland, and since 1 January 2018 also for delivery trucks and light road tractors [*leichte Sattelschlepper*] registered for the first time, combined with individual targets and fines; Art. 10 et seq. CO_2 Act [status as of 1 January 2018]). In addition, part of the CO_2 emissions arising from the use of motor fuels as energy sources in the transport sector must be compensated, for example through projects to reduce emissions. The Federal Council sets the compensation rate according to, among other things, the reduction target in terms of Art. 3 CO_2 Act being achieved (Art. 26 (1) and (2) CO_2 Act in conjunction with Art. 89 (1) CO_2 Ordinance). Finally, the Confederation imposes the CO_2 levy mentioned above on the production, extraction and import of thermal fuels (Art. 29 CO_2 Act). The enforcement of the CO_2 Act and the issuance of implementing provisions are the responsibility of the Federal Council (Art. 39 (1) CO_2 Act). It further periodically evaluates the effectiveness of the legal measures as well as the necessity of additional measures (Art. 40 (1) CO_2 Act). Implementation of the CO_2 Ordinance is the responsibility of the FOEN (Art. 130 (1) CO_2 Ordinance).

5.3 Insofar as the appellants demand implementation or toughening of reduction measures already stipulated in the law, that competence lies essentially with the Federal Council. Besides the authority of first instance, the Federal Council is also responsible for reviewing the necessity of additional CO_2 reduction measures. Nonetheless, it is not to be criticized that in the present case, the authority of first instance, as the department responsible for the matter (Art. 1 (2) and (3) of the Ordinance on the Organisation of the Federal Department of the Environment, Transport, Energy and Communications [OV-UVEK, SR 172.217.1]), ruled on the appellants' demands in their entirety. For in terms of Art. 47 (6) Government and Administration Organisation Act (GAOA, SR 172.010), affairs in the jurisdiction of the Federal Council are to be transferred to the department responsible in the matter insofar as rulings are to be issued that are subject to appeal before the Federal Administrative Court (cf. judgment FAC A-2723/2007 of 30 January 2008 E. 1.4). Just like Art. 25a APA, this automatic delegation mechanism serves to put into effect the guarantee of access to the courts in terms of Art. 29a Const. (cf. THOMAS SÄGESSER, Regierungs- und Verwaltungsorganisationsgesetz [RVOG], Handkommentar, 2007, Art. 47 margin number 45). Therefore, the authority of first instance was competent to rule on the demands of the appellants in their entirety in place of the Federal Council and on behalf of the Federal Offices subordinate to it.

6.

6.1 The appellants assert that the climate protection measures undertaken by the federal government are insufficient and therefore unlawful. In their opinion, neither the reduction target set by law for 2020 nor the reduction target projected for 2030 achieves the purpose of the law contributing to limiting the rise in global temperature to less than 2°C, even though Switzerland has pledged to do so under international treaties. Moreover, the appellants claim that there are considerable deficits in implementation, with the result, they claim, that not even the reduction target enshrined in law will be reached. For this reason, the appellants request that preliminary legislative proceedings be initiated for the purpose of establishing adequate emission reduction targets for 2020 and 2030. Furthermore, they request that the emission reduction measures required under existing law and necessary for achieving the enhanced reduction targets be implemented, or that such measures be taken, as appropriate.

6.2 Under Art. 25a (1) APA, provided an action is based on federal public law and affects rights or obligations, any person who has an interest worthy of protection may request from the responsible authority that it refrain from, discontinue or revoke unlawful actions (sub-paragraph a), rectify the consequences of unlawful actions (sub-paragraph b) or confirm the illegality of such actions (sub-paragraph c). The said requests must be directed against the unlawful action of a responsible federal authority. Art. 25a APA grants the affected person the right to an independent, subsequent administrative procedure resulting in a ruling concerning the claims under sub-paragraphs a-c (Art. 25a (2) APA; cf. also Art. 44 APA); such a ruling is subject to appeal. The right to issuance of a ruling relating to real acts is, however, subsidiary; if sufficient legal protection is available by other means, then Art. 25a APA does not provide the basis for a right to issuance of a material ruling based on Art. 25a APA. The same is true if the legislature has deliberately excluded legal protection vis-à-vis the real act (BGE 144 II 233, unpublished E. 6; BGE 140 II 315 E. 3.1; cf. with reference to *actio popularis* provided under special legislation, BGE 130 II 514 E. 2.3). Rightly, neither of these conditions is taken up in the present case.

The term "real act" is neither used nor defined in the text of the APA. No uniform definition of the term "real act" has been developed in case law up to now (cf. ISABELLE HÄNER, in Praxiskommentar VwVG, 2nd ed. 2016, Art. 25a margin numbers 6 et seq.; HÄFELIN, MÜLLER AND UHLMANN, loc. cit. margin number 1408; KIENER, RÜTSCHE AND KUHN, Öffentliches Verfahrensrecht, 2nd ed. 2015, N 328 and 353-355; TSCHANNEN, ZIMMERLI AND MÜLLER, Allgemeines Verwaltungsrecht, 4th ed. 2014, § 38 margin numbers 1-5; KÖLZ, HÄNER AND

BERTSCHI, Verwaltungsverfahren und Verwaltungsrechtspflege des Bundes, 3rd ed. 2013, margin numbers 362-364, all with references; cf. also the deliberations and references regarding the literature in BGE 144 II 233 E. 4.1). According to prevailing doctrine and case law, however, not only action by the authorities but also omission by the authorities to act may be the object of appeal, beyond the wording of the legal provision, and therefore action by the authorities may be requested (BGE 140 II 315 E. 2.1 with references to the literature; HÄFELIN, MÜLLER AND UHLMANN, loc. cit., margin number 1433). How the substantive area of application is then to be delineated and whether, for instance, generally abstract actions are covered by Art. 25a APA cannot be deduced either from the wording of the provision or from the materials. With respect to the definition of the substantive area of application of Art. 25a APA, the case law of the Swiss Federal Supreme Court refers to the guarantee of access to the courts in terms of Art. 29a Const., which guarantees effective legal protection in the case of legal positions which are individually worthy of protection. Accordingly, the decisive factor is whether a need for individual legal protection exists; in order to restrict the area of application as necessary to rule out *actio popularis*, the other criteria mentioned in Art. 25a (1) APA, namely the interest worthy of protection as well as rights and obligations being affected, are to be applied (BGE 144 II 233 E. 4.4 with references to case law; cf. also BGE 138 I 6 E. 1.2; also BGE 128 II 156 E. 4b with references to case law).

6.3

6.3.1 Art. 25a APA defines the dispute-specific legal protection interest in the issuance of a material ruling concerning real acts using an act-related criterion and a subject-related criterion. For one thing, the real act must affect rights or obligations, for another, the person filing the request must have an interest worthy of protection in the issuance of a ruling concerning the real act. In the same way, regarding formal acts in application of the law, the APA also distinguishes between the object of the challenge (Art. 44 APA) as the object-related prerequisite for the legitimation to resort to a legal remedy on the one hand and standing on the other (Art. 48 APA) as the subject-related prerequisite. In this respect, Art. 25a APA is aligned with the existing system of administrative legal protection. This provision creates the basis for an independent, subsequent administrative procedure, which, with the given prerequisites, results in a ruling and thus in an order by the authority in the individual case regarding rights and obligations of the affected person (Art. 25a (2) APA; for more information BGE 140 II 315 E. 2.1, 4.1 and 4.5, all with references; cf. also BGE 143 I 336 E. 4.2 [with reference to

BGE 140 II 315 E. 4.5-4.7] and BGE 136 I 323 E. 4.3; MARKUS MÜLLER, Rechtsschutz gegen Verwaltungsrealakte, in Pierre Tschannen (ed.), Neue Bundesrechtspflege, 2007, p. 344).

6.3.2 According to case law, the concept of the interest worthy of protection in terms of Art. 25a (1) APA must be understood in the same way as in the other provisions of the APA, namely as in Art. 48 (1) c APA. Therefore, the interest in legal protection, which may be of a legal or a material nature, means that a practical benefit must be pursued and the interest must be current here, too. No subject-related requirements going beyond this can be deduced from the wording of Art. 25 a (1) APA. Nonetheless, courts also review, in terms of the interest worthy of protection, which is a subject-related criterion, whether the appellants are affected in a way that differs from the general population and is thus particular in terms of Art. 48 (1) b APA. The reasoning for this is that the procedural provisions of Art. 25, Art. 25a and Art. 48 APA all aim to rule out *actio popularis* proceedings (cf. BGE 140 II 315 E. 4.2; judgment BGer 1C_455/2011 of 12 March 2012 E. 4.4; judgment FAC A-5762/2012 of 7 February 2013 E. 7, esp. E. 7.3, and FAC A-101/2011 of 7 September 2011 E. 4.4.1 with references to the literature; HÄNER, loc. cit., Art. 25a margin numbers 28 and 34 et seq.; also the references in BGE 143 I 336 E. 4.1).

6.3.3 Furthermore, entering into the matter of a request in terms of Art. 25a (1) APA assumes that rights or obligations are affected and thus that there is a violation of the personal legal sphere of the affected person. Within the context of Art. 25a APA, legal positions worthy of protection are derived primarily from fundamental rights. Legally protected interests from other legal titles, such as the article of purpose of the material legislation applicable, must also be examined (BGE 144 II 233 E. 7.3.1; BGE 140 II 315 E. 4.3 and E. 4.6; cf. for more recent case law relating to the guarantee of access to the courts under Art. 29a Const. also BGE 143 I 336 E. 4.3 et seq. [regarding the reorganization of waste collection in the municipality of Cazis] and judgment BGer 2C_272/2012 of 9 September 2012 E. 4 [regarding the cutback in sports lessons in vocational training schools]; also, regarding standing of the state radio and television supervisory body in proceedings, judgment BGer 2C_1024/2016 of 23 February 2018 E.2 et seq.). In this regard, it is sufficient that rights or obligations are affected and that there is therefore a certain intensity of being affected. If potential infringements of fundamental rights are involved, it is essentially a matter of the scope of the fundamental right whether the effect of the infringement is sufficient to assume that rights or obligations have been affected. This does not, however, presuppose an infringement of the protected fundamental right; the question whether such an infringement has occurred is a matter for the material assessment of the case.

Rather, if the applicant is to be assumed to be affected, it is sufficient for him to argue in a reasonable way that a reflex triggered by a real act is relevant in terms of fundamental rights and could therefore take on the intensity of an infringement (BGE 144 II 233 E. 7.3.2; cf. also BGE 143 I 336 E. 4.1 and E. 4.3.1).

6.3.4 These two prerequisites, that of the interest worthy of protection and that of rights or obligations being affected, can converge to a large extent: if the rights or obligations of a person filing a request are affected by a real act, the interest worthy of protection is grounded in this legal position being affected. In this respect, the situation is no different than that of the addressee of a material ruling, who is as a matter of course entitled to file an appeal (BGE 140 II 315 E. 4.3; cf. in this regard and regarding differentiation of the two prerequisites also however HÄNER, loc. cit., Art. 25a margin numbers 28 and 35, each with references).

7.

7.1 The appellants derive from Art. 10 Const. as well as Art. 2 and 8 ECHR that they are entitled to positive state protection from an excessive global temperature increase. Appellants 2-5, they claim, are particularly affected by global warming and its consequences. Scientific studies of past summer heat waves had confirmed the statistical finding that in particular older women over 75 years of age were impacted most by summer heat waves in terms of mortality and adverse health effects. In addition, appellant 3 suffered from cardiovascular illness and appellants 4 and 5 from asthma, which exacerbated the health impacts. The appellants were thus more strongly impacted by the consequences of global warming in legal positions protected by (fundamental) rights than the general public, and for this reason had an interest worthy of protection in the issuance of a material ruling in terms of Art. 25a APA.

7.2 The definition of the interest in legal protection in Art. 25a (1) APA is intended to ensure appropriate legal protection in the area of real acts because – as explained above – actual acts on the part of the state can also interfere in legal positions worthy of protection. However, it was not the intention of the legislator to provide legal protection for cases of minor importance or even enable *actio popularis* (BGE 140 II 315 E. 4.4; cf. also PIERRE TSCHANNEN, Amtliche Warnungen und Empfehlungen, in Zeitschrift für Schweizerisches Recht [ZSR] 1999 II, margin number 137). Art. 25a APA is therefore to be interpreted with reference to Art. 48 (1) APA, which also rules out *actio popularis* and emphasizes the character of the general right to appeal as an instrument of legal protection of the individual (cf. E. 4 above on the connection of

Art. 25a APA to the guarantee of access to the courts in terms of Art. 29a Const. and E. 5.1 above on the connection to the right to appeal in terms of Art. 48 APA; furthermore BGE 139 II 279 E. 2.2 et seq.). To make the distinction from *actio popularis* and also from a complaint to a supervisory authority in terms of Art. 71 APA, it must be carefully examined whether applicants are affected differently compared to the general public and are therefore particularly affected. The boundary to inadmissible *actio popularis* must be determined separately for each area of the law; a practical and reasonable distinction is required which takes into account the need for legal relief and the further options for legal protection (BGE 144 II 233 E. 8.4; cf. also judgment BGer 2C_959/2014 of 24 April 2015 E. 3.1 with references to case law.)

7.3 Courts had already taken up the question of sufficient legal protection outside formal proceedings directed toward issuance of a ruling on various occasions before Art. 25a APA entered into force, for example relating to the refusal of the police to permit specific persons to travel to the World Economic Forum (WEF) in Davos. In these cases, police action was aimed directly against individual persons, for which reason the question regarding their particular proximity to the matter at hand did not need to be discussed further (cf. BGE 130 I 369 and BGE 128 I 167).

In a different context, the courts had to rule on the question whether the appellants were particularly affected, also in distinction to *actio popularis*. The Federal Supreme Court, in its decision regarding supervision of the Mühleberg nuclear power plant, considered the criterion of being particularly affected personally to be fulfilled because of the "specific (spatial) proximity to the nuclear power plant"; it recognized risk exposure in relation to the particular source of danger as constituting standing (BGE 140 II 315 E. 4.7; cf. also judgments BGer 2C_272/2012 of 9 September 2012 E. 4.4 et seq. and BGer 1C_455/2011 of 12 March 2012 E. 4.4 et seq.; MÜLLER, loc. cit., p. 347). The Federal Supreme Court had argued comparably in a previous case – before Art. 25a APA had entered into force – involving the alteration of a factory in which a medical substance was to be produced in a biological process with genetically modified microorganisms. Despite requests to make the building application public, the building permit authority had refused to do so. In contrast, the Federal Supreme Court held that the local residents would be impacted most directly by the effects of a major accident, for which reason it was to be assumed that they were in a particular, noteworthy and close relation to the contested facility and could be impacted by the alteration more strongly than the general public. Therefore, they were to be granted the opportunity to

object in a formal procedure, and the building application was to be made public for this reason (BGE 120 Ib 379 E. 4). In contrast, the Federal Supreme Court did not grant legal standing to residents neighboring a railroad line on which nuclear fuel elements were to be transported; even in the event of a severe accident, the risk of radioactive contamination would not be significantly higher compared to the general risk of natural radiation exposure, for which reason the local residents could not be granted legal standing merely because of their spatial proximity (BGE 121 II 176 E. 3). In its most recent judgment concerning the national campaign to prevent HIV and other sexually transmitted diseases ("LOVE LIFE"), the Federal Supreme Court determined, in relation to the entitlement to issuance of a ruling in terms of Art. 25a APA, that because of the broad impact of the information campaign, it was decisive whether the applicants were particularly affected, in distinction to *actio popularis*. That was to be assumed if an individual was concretely affected in his or her rights and duties by a real act. If many persons were affected, the amount of weight to be given to the severity of the impact on the individual was decisive (BGE 144 II 233 E. 8.4).

7.4

7.4.1 The present case does not concern state action aimed directly against the appellants, and the appellants do not make this claim. Instead, the appellants refer to state obligations to protect in relation to an environmental impact caused by the general public, namely the consequences of climate change, and demand the issuance of a material ruling in terms of Art. 25a APA. According to the case law described above, this requires close proximity of the applicant to the matter in dispute, which – in distinction to *actio popularis* – goes beyond the proximity of the general public. Therefore, the requirement of particular proximity is to be upheld in the present case because the CO_2 Act did not introduce a special right to appeal and the general right to appeal is an instrument of legal protection of the individual. Therefore, it is to be examined in the following whether the extent to which the appellants are affected goes beyond that of the general public.

7.4.2 Marked changes of both temperature and precipitation during the summer are expected as consequences of climate change. The average temperatures can be expected to increase further over the course of the 21st century across Switzerland, in all regions and seasons. At the same time, the average amounts of precipitation in the summer will probably decrease in all of Switzerland, whereas increasing precipitation in the winter months is to be expected. In addition to this change in average temperature and average precipitation, a change in the nature of extreme events is to be expected: warm periods and heat waves in the summer can be expected

to be more frequent, more intense, and of longer duration, whereas in the winter, the number of nights with temperatures below freezing will decrease, especially on the Swiss Plateau. These factors in turn will have impacts, for example on the beginning of plant growth in the spring. In addition, the geographic range of carriers of disease and pathogens is changing (cf. for more information Swiss Confederation, Anpassung an den Klimawandel in der Schweiz, Aktionsplan 2014-2019, Zweiter Teil der Strategie des Bundesrates vom 9. April 2014, pp. 8 et seq. and 12 et seq. [in the following: Aktionsplan Klimawandel]; FOEN and Federal Office of Meteorology and Climatology [MeteoSwiss], Klimaänderung in der Schweiz, Indikatoren zu Ursachen, Auswirkungen, Massnahmen, 2013, pp. 11 et seq., 30 et seq. [in the following: Klimaänderung in der Schweiz]).

The impacts of climate change on people, animals and plants are hence of a general nature, even if not all are impacted equally. The adverse effects vary among different population groups in terms of economic and health impacts. For the population in cities and agglomerations, for example, heat waves are a health burden because of the formation of heat islands. Heat waves in the summer can put infants and small children at risk as well because of their susceptibility to dehydration, and high ozone levels due to the heat can bring about respiratory disorders and impairment of pulmonary function. In addition, the changed geographic range of carriers of disease such as ticks and mosquitoes will newly affect parts of the population which had previously not been exposed to such risks. Climate change, and in particular the associated change of average temperature and average amounts of precipitation also impact forestry, agriculture, winter tourism and water management, for example. In addition, because of the thawing permafrost, the danger of rockslides is increasing, and particularly in the winter, also the risk of flooding, debris flows and landslides (cf. for more information FOEN, Anpassung an den Klimawandel, umwelt 3/2017, pp. 6 et seq.; also the synopsis prepared by FOEN dated 20 August 2015 on the basis of the 2014 IPCC Assessment Report: "Der Klimawandel ist bereits sichtbar," available at < www.bafu.admin.ch > Themen > Klima > Dossiers > Klimakonferenz COP21 von Paris: Abkommen über die internationale Klimapolitik verabschiedet > Klimawandel weltweit [accessed on 13 November 2018]; Swiss Confederation, Aktionsplan Klimawandel, pp. 24-39; FOEN and MeteoSwiss, Klimaänderung in der Schweiz, pp. 58 et seq.)

7.4.3 This brief synopsis of possible impacts of climate change (also) on Switzerland shows that the group of women older than 75 years of age is not particularly affected by the impacts of climate change. Although different groups are affected in different ways, ranging from

economic interests to adverse health effects affecting the general public, it cannot be said from the perspective of the administration of justice, with a view to case law as described above, that the proximity of the appellants to the matter in dispute – climate protection on the part of the Confederation – was particular, compared with the general public (cf. in this sense also DFAC 2007/1 E. 3.9-3.11). Hence, the appellants have no sufficient interest worthy of protection, for which reason the authority of first instance rightly refused to issue a material ruling in terms of Art. 25a APA.

8.

8.1 The appellants support their right to the issuance of a material ruling on the violation of the positive obligation to provide protection granted—in their opinion—under Art. 2 and 8 ECHR by further invoking Art. 6 (1) and, on a subsidiary basis, Art. 13 ECHR. With reference to the case law of the Federal Supreme Court as well as that of the ECtHR, they argue that the broad concept of a civil rights dispute in terms of Art. 6 (1) ECHR also encompasses disputes pertaining to legislation against pollution. Moreover, they argue, the other prerequisites for the claim—namely a right recognized under domestic law as well as a genuine and serious dispute—are fulfilled, for which reason the authority of first instance would have been obliged to enter into the matter. In contrast, the authority of first instance assumed, also with regard to the basis for a claim under Convention law, that the case was an inadmissible *actio popularis* and accordingly rejected a right to the issuance of a material ruling based on the ECHR.

8.2 According to Art. 6 (1) ECHR, everyone is entitled to disputes over civil rights and obligations being assessed by an independent and impartial tribunal. Furthermore, in terms of Art. 13 ECHR, everyone whose rights or freedoms as set out in the ECHR have been violated is entitled to an effective remedy before a national authority, including cases in which the violation was committed by persons acting in an official capacity.

Art. 6 (1) ECHR contains general procedural and judicial guarantees ensuring a binding minimum standard in favor of the individual for national procedures. The terms used in the Convention are to be interpreted autonomously in terms of the practice of the organs of the ECHR (BGE 131 I 467 E. 2.4). According to this practice, Art. 6 (1) ECHR not only refers to civil rights disputes in the narrow sense but also pertains to administrative acts of public bodies in the exercise of governmental authority, provided that these significantly infringe

on contractual relationships, private rights or asset positions. The applicability of Art. 6 (1) ECHR thus requires a civil claim derived from national law. And the dispute must concern existence, content, scope or exercise of such civil rights or obligations. This must be of a genuine and serious nature and have a direct and immediate impact on the civil claims; effects that are only distant or indirect are not sufficient (BGE 134 I 140 E. 5.2 and BGE 130 I 388 E. 5.1 and 5.3, each with references to the case law of the ECtHR; in addition, BGE 130 II 425 E. 2.2; MEYER-LADEWIG, HARRENDORF AND KÖNIG, in Meyer-Ladewig, Nettesheim and von Raumer [eds.], Europäische Menschenrechtskonvention EMRK, Handkommentar, 4th ed. 2017, Art. 6 margin numbers 9 and 17 et seq.; GRABENWARTER AND PABEL, Europäische Menschenrechtskonvention, 6th ed. 2016, § 24 margin number 15; FRANK MEYER, in Karpenstein and Mayer [eds.], EMRK, Kommentar, 2nd ed. 2015, Art. 6 margin number 14, each with references to the case law of the ECtHR).

According to what has been said above, the applicability of Art. 6 (1) ECHR requires *inter alia* a genuine dispute of a serious nature the outcome of which proves to be directly decisive for the civil claim. This prerequisite for a claim is also a prerequisite for litigation and therefore relevant in two respects: like the other prerequisites for a claim, it must be asserted in formal terms in a reasonable way (cf. BGE 127 I 115 E. 5). Moreover, against this background, Art. 6 (1) ECHR is not to be interpreted and applied in isolation, but in accordance with the case law pertaining to Art. 34 ECHR concerning the procedure of individual applications before the ECtHR; according to Art. 34 ECHR sentence 1, any natural person who claims that one of his or her rights as codified in the ECHR has been violated by one of the contracting parties can lodge an application with the court. Therefore, the right to lodge an application presupposes a direct and personal grievance; the applicant must demonstrate in a substantiated and convincing way that his or her rights as codified in the Convention are directly affected by the contested action or failure to act by the public authority in the exercise of governmental authority. *Actio popularis* is not permissible (cf. for more information judgment FAC A-2723/2007 of 30 January 2008 E. 8.2 with references to the literature; PATRICK SCHÄFER, in Karpenstein and Mayer [eds.], EMRK, Kommentar, 2nd ed. 2015, Art. 34 margin number 61 et seq. with references to the case law of the ECtHR; ANDREAS KLEY, Gerichtliche Kontrolle von Atombewilligungen, Europäische Grundrechte-Zeitschrift [EuGRZ] 1999, pp. 179 et seq.).

8.3 The appellants argue that the CO_2 Act's purpose of contributing to limiting the rise in global temperature to less than 2°C cannot be achieved with the current and/or proposed

reduction targets. Moreover, they criticize insufficient implementation of the current legislation. For this reason, they demand that preliminary legislative proceedings be initiated for the purpose of establishing sufficient, i.e., more stringent, emission reduction targets for 2020 and 2030. Both the legislators and the general public, they argue, are to be provided with information about the need for a further reduction in greenhouse gas emissions. Moreover, they argue that the emission reduction measures required in terms of current law and necessary in order to achieve the more stringent reduction targets are to be implemented and/or enacted.

Neither preliminary legislative proceedings nor the requested provision of information to the public can make a direct contribution toward reducing greenhouse gas emissions in Switzerland in line with the case law summarized above. Rather, this depends on the decisions of the legislators and regulators as well as of each individual. The requested actions are therefore not appropriate for reducing the risk of heatwaves during the summer. The same applies inasmuch as the appellants demand the introduction of emission reduction measures not currently provided for by law, such as a CO_2 levy on motor fuels or the enactment of certain building standards at the federal level. And the demand that in the transport sector automobile importers conduct measurements of CO_2 emissions corresponding to the actual CO_2 emissions produced has no (explicit) basis in the law (Art. 10 et seq. CO_2 Act and Art. 17 et seq. CO_2 Ordinance), either, so that it is not a question of "merely" enforcing current law in this area as well, unlike demanding the enforcement of pollution regulation on the basis of environmental legislation.

8.4 In this factual situation, it cannot be said that a genuine dispute of a serious nature was brought before the authority of first instance the outcome of which would have proven to be directly decisive for any possible civil claims by the appellants; a reduction of the general risk of danger cannot be achieved directly through the actions demanded. The authority of first instance was therefore not obliged on the basis of Art. 6 (1) ECHR to enter into the matter of the appellants and to issue a material ruling which would open up the path to appeal and thus provide for protection through the courts. With this outcome, it is not necessary to examine Art. 13 ECHR, either, inasmuch as the present case to be assessed is a civil dispute, as the appellants argue; the guarantee in terms of Art. 13 ECHR is absorbed in full by Art. 6 ECHR in civil disputes (cf. MEYER-LADEWIG, HARRENDORF AND KÖNIG, loc. cit., Art. 6 margin number 253; FROWEIN AND PEUKERT, Europäische Menschenrechtskonvention, Kommentar, 3rd ed. 2009, Art. 13 margin number 10).

9.

In summary, the appellants are not affected by the Confederation's climate protection measures in a way that goes beyond that of the general public. Their legal requests, inasmuch as they are based on Art. 25a APA and demand (further) actions to reduce greenhouse gas emissions, are therefore to be qualified as inadmissible *actio popularis*; the authority of first instance rightly did not enter into the matter. Further claims to the issuance of a material ruling do not result from the ECHR, either. Therefore, the appeal is to be dismissed.

10.

Given this outcome of the proceedings, the appellants are considered to have lost their case. They shall therefore bear the costs of the proceedings, which are to be fixed at 5,000 francs (Art. 63 (1) APA in conjunction with Art. 1 et seq. of the Rules on Costs and Compensation before the Federal Administrative Court [VGKE, SR 173.320.2]). The advance on costs paid by the appellants amounting to 5,000 francs will be used to cover the costs of the proceedings.

Legal costs will not be reimbursed to the appellants in view of their defeat (Art. 64 (1) APA; Art. 7 et seq. VGKE). As a federal authority, the authority of first instance is not entitled to reimbursement of legal costs, either (Art. 7 (3) VGKE).

Accordingly, the Federal Administrative Court (FACA) finds the following:

1.

The appeal is dismissed.

2.

The costs of the proceedings in the amount of 5,000.00 francs are imposed on the appellants, to be paid once the present judgment enters into force. The advance in the amount of 5,000.00 francs which has been paid by the appellants will be used to pay the costs of the proceedings.

3.

No legal costs are awarded.

4.

This judgment will be sent to:

– the appellants (court document)

– the authority of first instance (Ref-Nr. 237-99-00001/00082/00001/Q142-1538; court document)

The presiding judge:	The court clerk:
[signature Christoph Bandli]	[signature Benjamin Strässle-Kohle]

[seal, Federal Administrative Court]

Christoph Bandli	Benjamin Strässle-Kohle

Instructions on legal remedies:

An appeal in matters of public law (Art. 82 et seq., 90 et seq. and 100 FSCA) against this judgment can be filed with the Federal Supreme Court, 1000 Lausanne 14, within 30 days after its notification. The submission is to be written in an official language [of Switzerland] and must include the demands, grounds for the demands indicating the evidence, and a signature. The contested judgment and the evidence, provided it is available to the appealing party, are to be enclosed (Art. 42 FSCA).

Mailed: [stamp: 5 December 2018]