



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Published on 1st of July 2024

FOURTH SECTION

Application no. 18859/21
Markus MÜLLNER
against Austria
lodged on 8 April 2021
communicated on 18 June 2024

SUBJECT MATTER OF THE CASE

The application concerns complaints about Austria's alleged failure to mitigate the impacts of climate change, in particular global warming, by taking effective measures to reduce its greenhouse gas emissions and to limit the increase in the global average temperature to 1.5°C above pre-industrial levels. The applicant suffers from multiple sclerosis. He claims that his symptoms worsen with the increase of external temperatures, leading to temporary paralysis and restricted mobility, an effect known as Uhthoff's Syndrome.

On 20 February 2020 the applicant lodged, together with other individuals, a complaint with the Constitutional Court pursuant to Articles 139 and 140 of the Federal Constitution (*Bundes-Verfassungsgesetz*) to challenge the constitutionality of certain provisions of the Value Added Tax Act (*Umsatzsteuergesetz*), the Mineral Oil Tax Act (*Mineralölsteuergesetz*) and the Aviation Benefits Regulation (*Luftfahrtbegünstigungsverordnung*). The applicant complained that these provisions, which grant tax benefits and exemptions to the aviation industry but not to railway companies, promoted the means of transportation with the largest climate-damaging effect and directly affected him as a consumer who factually had to bear the burden of the tax and whose preferred means of transportation, the train, was put at a disadvantage. The provisions also violated the state's positive obligations

under Articles 2 and 8 of the Convention to protect the applicant from the adverse impacts of the climate crisis on his life and health.

On 30 September 2020 the Constitutional Court rejected the complaint as inadmissible holding that the applicant was not the addressee of the provisions regulating tax benefits for companies and that they also did not interfere with his legal interests as the applicant had argued that he did not use flights but trains as a means of transportation. The decision was served on the applicant on 12 October 2020.

In his application to the Court, the applicant claims that the effects of the climate crisis expose him to a real and serious risk for his physical, psychological and moral integrity, personal dignity and the overall quality of his private and family life. He complains under Article 6 of the Convention that the overly formalistic approach taken by the Constitutional Court when deciding on his complaint violated his right of access to a court. Relying on Article 8 of the Convention (and subsidiarily on Article 2), the applicant complains that the respondent state has not established an adequate legislative and administrative framework to meet its targets to reduce the global rise of temperature although reaching these targets would have significantly improved his overall well-being. Under Article 13 of the Convention, he complains that the domestic legal system did not provide for an effective remedy before a national authority to challenge omissions on a legislative or administrative level in this regard.

QUESTIONS TO THE PARTIES

1. Is the application admissible? In particular:

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

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

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

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

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

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

b. Did the applicant have access to a court for the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 626-640)?

Did the manner in which the Constitutional Court applied Articles 139 and 140 of the Federal Constitution involve excessive formalism (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 80-86, 96-99, 5 April 2018, and *Dos Santos Calado and Others v. Portugal*, nos. 55997/14 and 3 others, §§ 111-117, 31 March 2020)?

MÜLLNER v. AUSTRIA – SUBJECT MATTER OF THE CASE AND QUESTIONS

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