

Müllner v Austria -

case before the European Court of Human Rights Note on Third Party Interventions

Background of the case

On 8 April 2021, the individual applicant, Müllner, filed an application before the European Court of Human Rights ("ECtHR", "the Court") against Austria for continuously and directly violating the Applicant's right to life (Article 2), family life (Article 8), access to justice (Article 6) and effective remedy (Article 13), of the European Convention on Human Rights, ("the Convention").

The Applicant particularly argues that his health and well-being are severely impacted as a result of current climate change-induced rise in temperatures as well as heatwaves. The Applicant was diagnosed with multiple sclerosis and Uhthoff's Syndrome, which means that his symptoms worsen in higher temperatures, leading to temporary paralysis and restricted mobility. He argues that Austria has failed to mitigate the impact of climate change and in particular to reduce greenhouse-gas emissions, which cause global average temperatures to rise. Moreover, he argues that he has no effective remedy available to request a national authority to examine the substance of his complaint (Article 13). Notably, his challenge of individual climate damaging policies before domestic courts, in order to fulfill the procedural requirement of Article 35, would not have – even if successful – constituted an effective remedy pursuant to Article 13. Furthermore, the Austrian Constitutional Court's excessively formalistic approach in denying his challenge of individual climate damaging policies violated his right to access to a court (Article 6).

Procedure

On, 18 June 2024 the ECtHR granted Müllner's application **priority under Rule 41** and communicated the case to the Respondent Government, requesting Austria to submit a statement of facts together with written observations on the admissibility and merits of the case, as well as a set of questions posed by the court by **10 September 2024**.¹

Considering that the great majority of applications do not get communicated, and considering that the Court indicated that this case might become an impact case, this could be seen as a very positive development.

This suggests the Court recognizes the importance and urgency of this case.²

¹ <https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22001-235058%22%5D%7D>.

² <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7987364-11142961&filename=Notification%20to%20Government%20of%20the%20Müllner%20v.%20Austria%20application%20concerning%20the%20environment%20.pdf>

The Court posed relevant questions concerning the issues raised by the Applicant, including the Respondent State's positive obligations to protect Articles 8 of the Convention as well as to provide access to a national court (Article 6) and effective remedy in accordance with Article 13.³

The role of interventions in this case

As provided in Article 36 of the Convention, in the interest of proper administration of justice, third parties (i.e. not the parties involved in the dispute) can request permission to submit written comments in relation to the case within 12 weeks after its communication (in this case, by **10 September 2024**). The request for intervention must be “duly reasoned”,⁴ aiming to enrich the Court’s deliberations,⁵ particularly in cases with the potential of having a broad impact beyond the parties to the case, and ensuring the development of good precedents and jurisprudence.⁶

If the request is granted, the Court is entitled to set out the conditions for intervening. For instance, the maximum length of the written submissions, the time of submission, and conditions related to the proposed intervention's content.⁷

The Applicant's claims focus on the severe impacts that climate-induced rise in temperature as well as heat waves have on his health and private life, arguing that the Austrian government has failed to implement the necessary climate mitigation policies to protect him from dangerous temperature increase. Also, Austria has failed to implement an adequate legal framework to effectively file complaints re inadequate climate policies.

The range of topics on which third party interventions might be helpful include the following, without limitation:

Facts/ science:

1. Outlining the current and planned climate change mitigation measures in Austria and their scientific basis, as well as their projected consequences.
2. Informing the Court on the impact that outside temperatures have on individuals suffering from Uhthoff’s syndrome, as well other temperature sensitive medical conditions.
3. Presenting scientific evidence supporting the 1.5°C limit in order to prevent dangerous interference with the climate system and irreversible damages. Emphasis on the cumulative

³<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7987364-11142961&filename=Notification%20to%20Government%20of%20the%20Müllner%20v.%20Austria%20application%20concerning%20the%20environment%20.pdf>

⁴ Rules of Procedure, Art. 44 para. 3b.

⁵ Ibid.

⁶ See <https://www.echr.am/en/functions/representation/third-party-intervention.html>.

⁷ Rules of Procedure, Art. 44 para. 5.

nature of emissions and the possibility of reaching tipping points if the 1.5°C threshold is crossed would be helpful.

Law:

1. Setting out Austria's legal framework concerning remedies in relation to climate related complaints, and their (lack of) effectiveness.
2. Setting out Austria's legal framework concerning the implementation of EU climate targets.
3. Elaborating on criteria for victim status of individuals under the ECHR in relation to climate change, setting out that the standard ought not to be overly stringent.
4. Elaborating on the scope and consequences of the global climate emergency upon the relevant Convention rights.
5. Elaborating on Austria's duties, as an economically developed country to take the lead and progressively reduce emissions, reflecting its highest possible ambition as its fair share of the global efforts.
6. Elaborating on the State obligations flowing from Article 8 ECHR in the context of climate change, as applied in the ECtHR's judgment in *KlimaSeniorinnen*.
 - a) Elaborate on the obligation to reduce emissions within a State's own territory as fast as possible, and the due diligence obligation to conduct studies assessing what reductions are feasible.
 - b) Elaborate on the obligation to support reductions abroad, and applicable due diligence standards, especially where feasible reductions as fast as possible will still prematurely deplete the carbon budget.
7. Elaborating on the right to access to court under Article 6 ECHR in the context of climate change, as applied in the ECtHR's judgment in *KlimaSeniorinnen*.
8. Elaborating on the applicability of the Bosphorus doctrine to EU climate legislation.

Interveners should abstain from commenting on the particular facts or merits of the case and from expressing opinion on the outcome of the case. The intervention should focus on a legal or scientific issue or bring factual context relevant to the case, for instance, by establishing if there is a consensus on a particular matter or illustrating how different interests are at stake in a particular case. Interveners are encouraged to reference the most recent and authoritative literature available.

How to intervene

Given the novelty of the case, organisations and individuals with expert knowledge relating to climate change impacts on people suffering from Uhthoff syndrome (or other types of heat induced symptoms of disease), climate change science, and climate and human rights law are especially encouraged to intervene.

The Court welcomes joint interventions, which present potential interveners with the possibility of having a multidisciplinary collaboration with other experts or organisations that would enrich the Court's deliberation process to a greater extent.

Any party seeking to intervene in the *Müllner v Austria (Application no. 18859/21)* should request leave to intervene by **10 September 2024**, in writing and sent by post, and be addressed to Vice-President of the fourth section, **Judge Tim Eicke**. The request for leave should set out relevant details about the intervenor's expertise and experience, and outlining the matters that the intervention would address.

For all details concerning the request for leave to intervene, please see the enclosed *Practice Directions*, as published by the Court.