Canton of Zug

[stamp:]
19 Dec. 2025

Cantonal Court

1st Division **A1 2023 9**

Cantonal Court Judge R. Ackermann, Division President
Cantonal Court Judge D. Panico Peyer
Cantonal Court Judge M. Casutt
Court Clerk P. Sterchi

Decision of 17 December 2025

in the matter of

1. **Asmania,** Kelurahan Pulau Pari, Kecamatan Kepulauan Seribu, Kabupaten Adminitrasi Kepulauan Seribu, Bertempat Tinggal di Pulau Pari RT001/004, Indonesia
2. **Arif Pujianto,** Kelurahan Pulau Pari, Kecamatan Kepulauan Seribu, Kabupaten Adminitrasi Kepulauan Seribu, Bertempat Tinggal di Pulau Pari RT004/004, Indonesia
3. **Mustaghfirin,** Kelurahan Pulau Pari, Kecamatan Kepulauan Seribu, Kabupaten Adminitrasi Kepulauan Seribu, Bertempat Tinggal di Pulau Pari RT001/004, Indonesia
4. **Edi Mulyono,** Kelurahan Pulau Pari, Kecamatan Kepulauan Seribu, Kabupaten Adminitrasi Kepulauan Seribu, Bertempat Tinggal di Pulau Pari RT001/004, Indonesia

all represented by attorney-at-law Cordelia Bähr, bähr ettwein Rechtsanwälte, Ekkehardstrasse 6, P.O. Box 46, 8042 Zurich
Claimants,

versus

Holcim Ltd, Grafenauweg 10, 6300 Zug,
represented by attorney-at-law Felix Dasser, attorney-at-law Stefanie Pfisterer, attorney-at-law Kimberly Amrein and/or attorney-at-law Richard G. Allemann, Homburger Ltd, Prime Tower, Hardstrasse 201, 8005 Zurich, and attorney-at-law Sandro G. Tobler, Schnurrenberger Tobler Gnehm & Partner, Alpenstrasse 2, 6300 Zug,
Defendant,

concerning

Protection of personality and claim (procedural requirements)

Prayers for relief

Claimants

1.1 That the Defendant's entire group, i.e. the Defendant itself and the subsidiaries under its control, be immediately prohibited, under penalty of a fine of CHF 1,000.00 per day and under threat of a criminal penalty under Art. 292 of the Swiss Criminal Code (*Strafgesetzbuch*, SCC) against the responsible corporate bodies in the event of non-compliance, from emitting carbon dioxide (CO_2) directly and indirectly (scopes 1, 2 and 3) in an amount that, in relation to the level in 2019 (absolute CO_2 emissions of 148 million tonnes CO_2; relative CO_2 emissions of 669 kg CO_2 per tonne of cement-containing material), exceeds an absolute and relative CO_2 reduction by the Defendant of (net):

a. 24% by the end of 2025;
b. 28% by the end of 2026;
c. 31% by the end of 2027;
d. 35% by the end of 2028;
e. 39% by the end of 2029;
f. 43% by the end of 2030;
g. 46% by the end of 2031;
h. 50% by the end of 2032;
i. 52% by the end of 2033;
j. 56% by the end of 2034;
k. 59% by the end of 2035;
l. 62% by the end of 2036;
m. 63% by the end of 2037;
n. 65% by the end of 2038;
o. 67% by the end of 2039; and
p. 69% by the end of 2040.

1.2 In the alternative to para. 1.1, the Defendant's entire group, i.e. the Defendant itself and the subsidiaries under its control, be immediately prohibited, under penalty of a fine of CHF 1,000.00 per day and under threat of a criminal penalty under Art. 292 of the Swiss Criminal Code (SCC) against the relevant corporate bodies in the event of non-compliance, from emitting carbon dioxide (CO_2) directly and indirectly (scopes 1, 2 and 3) in an amount that, in relation to the level in 2019 (absolute CO_2 emissions of 148 million tonnes CO_2; relative CO_2 emissions of 669 kg CO_2 per tonne of cement-containing material), exceeds an absolute and relative CO_2 reduction by the Defendant of (net):

a. 43% by the end of 2030; and
b. 69% by the end of 2040.

2. That the Defendant be ordered to pay Claimant 1

a. a sum in the amount of 38,695,672.00 Indonesian rupiah (IDR) for the implementation of flood protection measures on the coast of Pari;
b. damages in the amount of IDR 63,000.00, expressly reserving the right to bring further action;
c. damages to compensate for anticipated future harm in the amount of IDR 1,280,257.00; in the alternative, damages to be estimated by the court;
d. compensation for pain and suffering of IDR 15,427,813.00 plus interest at 5% p.a. since 11 July 2022;

e. in the alternative to para. 2d, compensation for pain and suffering in the amount of CHF 1,000.00 plus interest at 5% p.a. since 11 July 2022.

3. That the Defendant be ordered to pay Claimant 2
   a. the sum of IDR 38,695,672.00 for the implementation of flood protection measures on the coast of Pari;
   b. damages in the amount of IDR 13,188.00, expressly reserving the right to bring further action;
   c. damages to compensate for anticipated future harm in the amount of IDR 1,302,517.00; in the alternative, damages to be estimated by the court;
   d. compensation for pain and suffering of IDR 15,427,813.00 plus interest at 5% p.a. since 11 July 2022;
   e. in the alternative to para. 3d, compensation for pain and suffering in the amount of CHF 1,000.00 plus interest at 5% p.a. since 11 July 2022.
4. That the Defendant be ordered to pay Claimant 3
   a. the sum of IDR 38,695,672.00 for the implementation of flood protection measures on the coast of Pari;
   b. damages in the amount of IDR 420.00, expressly reserving the right to bring further action;
   c. damages to compensate for anticipated future harm in the amount of IDR 1,292,857.00; in the alternative, damages to be estimated by the court;
   d. compensation for pain and suffering of IDR 15,427,813.00 plus interest at 5% p.a. since 11 July 2022;
   e. in the alternative to para. 4d, compensation for pain and suffering in the amount of CHF 1,000.00 plus interest at 5% p.a. since 11 July 2022.
5. That the Defendant be ordered to pay Claimant 4
   a. the sum of IDR 38,695,672.00 for the implementation of flood protection measures on the coast of Pari;
   b. damages to compensate for estimated future loss in the amount of IDR 20,257.00; in the alternative, damages to be estimated by the court;
   c. compensation for pain and suffering of IDR 15,427,813.00 plus interest at 5% p.a. since 11 July 2022;
   d. in the alternative to para. 5c, compensation for pain and suffering in the amount of CHF 1,000.00 plus interest at 5% p.a. since 11 July 2022.
6. That the Defendant be ordered to pay court and party costs.

Defendant

1. The action is to be declared non-admissible.
2. In the alternative, the action is to be dismissed in its entirety.
3. The Claimants should be ordered to pay court and party costs (plus VAT).

Facts

1. Asmania, Arif Pujianto, Mustaghfirin and Edi Mulyono (hereinafter: the Claimants) live on the island of Pari in Indonesia. As a voluntary joinder within the meaning of Art. 71 of the Swiss Civil Procedure Code (*Zivilprozessordnung*, CPC), the Claimants are alleging breaches of personality rights and damage to property caused by climate change. The island of Pari is being flooded with increasing frequency as a result of rising sea levels. In the Claimants' view, Holcim Ltd (hereinafter the Defendant) bears joint responsibility for this, because, as the world's largest cement manufacturer, it emits too much CO_2 and thereby contributes to climate change (file 1 para. 1-5). The Defendant disputes that it is liable for the alleged breaches of personality rights and damage to property (file 18 para. 15).

2. On 11 July 2022, the Claimants filed an application for arbitration against the Defendant with the Office of the Justice of the Peace of Zug, thereby making the case pending (Art. 62(1) CPC). On 6 October 2022, the Office of the Justice of the Peace of Zug granted the Claimants permission to proceed and ordered them to pay the costs of the arbitration proceedings of CHF 600.00 (file 1/6).

3. In a submission dated 30 January 2023, the Claimants filed the present action against the Defendant with Zug Cantonal Court (file 1).

4. In a decision dated 30 June 2023, the judge confined the proceedings to the issue of whether the procedural requirements had been met (file 15)

5. On 25 September 2023, the Defendant filed its statement of defence, which was confined to the issue of the procedural requirements, together with the prayer for relief set out above (file 18).

6. In a reply dated 12 March 2024, the Claimants filed the prayer for relief set out above (file 26). In its rejoinder dated 25 September 2024, the Defendant maintained its prayer for relief (file 36).

7. Subsequently, the Claimants and the Defendant each filed further statements of position, on 20 December 2024 and 17 March 2025 respectively (file 40a and 46).

8. At the main hearing on 3 September 2025, both parties made two submissions each (file 58). In addition, the Defendant filed new documents at the main hearing as well as on 22 September 2025 (see file 57, 58 pp. 2 and 61).

Considerations

1.1 The court shall consider the action, provided the procedural requirements are met (Art. 59(1) CPC). The procedural requirements include inter alia a legitimate interest in the proceedings (known as a legitimate interest in the proceedings) and the territorial and material jurisdiction of the court before which the proceedings have been brought (Art. 59(1) and (2) (a) and (b) CPC; Zingg, Berner Kommentar, 2012, Art. 59 CPC no. 31). The formulation of a correct prayer for relief is also a procedural requirement. In the prayer for relief, the Claimant must state their demands specifically, clearly and with certainty (see Art. 221(1)(b) CPC; Art. 84(1) CPC;

Willisegger, Basler Kommentar, 4th ed. 2024, Art. 221 CPC nos. 12 and 18; Leuenberger, in: Sutter- Somm/Lötscher/Leuenberger/Seiler [ed.], Kommentar zur Schweizerischen Zivilprozessordnung, 4th ed. 2025, Art. 221 CPC no. 40; BGE [Decisions of the Federal Supreme Court] 142 III 102 consid. 5.3.1 and 137 III 617 consid. 4.3). If there is an objective accumulation of claims, the procedural requirements must be met for each action individually, which is why these requirements must generally be examined separately (Gehri, Basler Kommentar, 4th ed. 2024, Art. 60 CPC no. 10a; Zingg, loc. cit., Art. 60 CPC no. 20).

1.2 The court shall examine the procedural requirements ex officio (Art. 60 CPC). However, it cannot be inferred from this that the court must investigate at its own initiative facts that could make the action appear admissible. Art. 60 CPC does not relieve the parties of the burden of proof or of their obligation to participate actively in gathering the materials of the case (see Art. 160 CPC), to submit the relevant factual material to the court and to designate the evidence. In this regard, the claimant must present and prove the facts that render its action admissible, and the Defendant must establish those facts that are likely to refute or invalidate the claimant's claims (judgment of the Federal Supreme Court 4A_229/2017 of 7 December 2017, consid. 3.1).

The court must examine the procedural requirements according to the limited inquisitorial principle (see BGE 148 III 322 consid. 3.7; judgment of the Federal Supreme Court 4A_229/2017 of 7 December 2017, consid. 3.3–3.4). This limited or “partial” inquisitorial principle is distinguished by the fact that it operates asymmetrically for the two parties to the proceedings rather than evenly. Claimants continue to be subject to the usual principle of having to provide evidence in support of their case (and ordinary procedural law, including the right to submit new evidence provided for therein), whereas the Defendant is relieved of the burden of contestation and, in relation to factual circumstances that preclude the action, facts that come to light late are to be taken into account ex officio. On the other hand, facts that suggest that the procedural requirements are met do not need to be taken into consideration if those facts were not submitted by the Claimant or were submitted late. The court must ensure ex officio that the procedural requirements are met, regardless of the parties' submissions. The court is therefore not bound by the admissions made by the parties and must inquire ex officio whether there are facts that argue that the procedural requirements have not been met. The duty to investigate or to take account of facts ex officio applies only to circumstances that preclude the admissibility of the action and may justify that action being dismissed, although the court is not obliged to conduct extensive enquiries unless the proceedings are generally subject to the unlimited inquisitorial principle. An ex officio investigation of the facts is however required if, based on the parties’ submissions, commonly known facts or otherwise, the court perceives that there are indications that a procedural requirement might not be met (judgment of the Federal Supreme Court 4A_229/2017 of 7 December 2017, consid. 3.4 and 3.4.2).

1.3 If the court must clarify the facts ex officio, it considers any new facts and new evidence until it begins its deliberations. Actual new evidence is therefore admissible until the judgment is deliberated, provided that it is submitted in accordance with the procedural requirements listed by way of example in Art. 59 CPC (Art. 229(3) CPC; Willisegger, loc. cit., Art. 229 CPC no. 65). Accordingly, the documents filed by the Defendant at the main hearing of 3 September 2025 as well as subsequently are to be taken into account for the purpose of assessing the

procedural requirements (file 57/142 and 61/143). In the following considerations, reference is made to these documents where this is relevant to the outcome of the proceedings.

1.4 While the Claimants are assuming that the procedural requirements have been met in relation to all of their prayers for relief, the Defendant is disputing that the requirements for a decision on the merits have been met. In support of this position, it asserts that there is no civil dispute, that the Claimants have no legitimate interest in the proceedings in the action and that the Claimants' request for injunctive relief is unspecific and thus unenforceable. The procedural requirements must be examined below: Firstly, the territorial and material jurisdiction (see consid. 2. et seq. below), then the existence of a legitimate interest in the proceedings (see consid. 5. et seq. below) and finally the specificity of the request for an injunction (see consid. 6. et seq. below). If it is established that a procedural requirement is not met, a hearing on the merits of the case may not be held and the action must be dismissed (BGE 140 III 159 consid. 4.2.4; Domej, in: Oberhammer/Domej/Haas [ed.], Kurzkommentar zur Schweizerischen Zivilprozessordnung, 3rd ed. 2021, Art. 59 CPC no. 7).

2. The Claimants live on the island of Pari in Indonesia (file 1/8–11). The Defendant's registered office is located in Zug (file 1/12). This thus constitutes an international set of facts as defined in Art. 1(1) of the Swiss Federal Act on Private International Law (*Bundesgesetz über das internationale Privatrecht*, PILA). Internationally, the jurisdiction of the Swiss courts is governed by the PILA, subject to international treaties, in particular the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention) (Art. 1(2) PILA; Grolimund/Loacker/Schnyder, Basler Kommentar, 4th ed. 2021, Art. 1 PILA no. 60). Switzerland is a Contracting State to the Lugano Convention (see Rohner/Lerch, Basler Kommentar, 3rd ed. 2024, Art. 1 Lugano Convention nos. 14 and 115).

The Lugano Convention is applicable if the situation under discussion falls within the territorial/personal and substantive scope of application of the Convention (BGE 135 III 185 consid. 3.1). The Lugano Convention is applicable in civil and commercial matters and excludes public law matters from its substantive scope of application. The term “civil and commercial matter” is contractually autonomous, i.e. it must be interpreted without recourse to national law. The decisive criterion distinguishing such matters from public law matters is whether the disputed legal relationship is connected with the exercise of sovereign powers. Even a legal dispute between a public authority and a private individual can qualify as a ‘civil and commercial matter’ if it is not related to the exercise of that authority’s sovereign powers (see Rohner/Lerch, loc. cit., Art. 1 Lugano Convention nos. 26 et seq. and 44–45). The legal characterisation of the present dispute is disputed between the parties. The parties to the current proceedings are natural persons and one legal entity. The exercise of the sovereign powers of a public authority is not the subject-matter of this dispute. It is thus a civil matter and therefore falls within the scope of the substantive application of the Lugano Convention. In addition, breaches of personality rights and claims for damages must be classified as a civil or commercial matter within the meaning of Art. 1(1) Lugano Convention (see Rohner/Lerch, loc. cit., Art. 1 Lugano Convention no. 51). This is also to be assumed in the present case, as will be shown below.

The territorial/personal scope of application of the Lugano Convention must be examined based on the individual provisions of the Lugano Convention on jurisdiction (BGE 135 III 185 consid. 3.1). Pursuant to Art. 2(1) Lugano Convention, the Defendant must be sued in the State in which it has its registered office (see Dallafior/Schumacher, Basler Kommentar, loc. cit., Art. 2 Lugano Convention no. 10 in conjunction with Art. 59(1) and Art. 60(1) Lugano Convention), which is Switzerland in the present case (file 1/12). In addition to the Defendant having its registered office in a Contracting State, the application of Art. 2 Lugano Convention requires another international element, such as the claimant being domiciled abroad (BGE 135 III 185 consid. 3.3). The fact that the Claimants live in Indonesia means that this international element is met, and the present dispute thus falls within the territorial/personal scope of application of the Lugano Convention (see BGE 135 III 185 consid. 3.3). Switzerland thus has jurisdiction internationally to hear the present dispute.

2.1 The question of before which jurisdiction proceedings should be brought against the Defendant in its State of domicile is governed by the PILA (see Dallafior/Schumacher, loc. cit., Art. 2 Lugano Convention nos. 25-27). According to Art. 2 PILA, the courts of the Defendant's registered office have jurisdiction, which means that the Cantonal Court of Zug has national/local jurisdiction (see Droese, Basler Kommentar, loc. cit., Art. 2 PILA no. 8). The material and functional jurisdiction of the Cantonal Court derives from section 27(1) Court Organisation Act (*Gerichtsorganisationsgesetz*, GOG).

2.2 The applicable law in an international context is determined in accordance with the PILA. Art.s 129 et seq. PILA apply to actions in tort. These provisions also expressly apply to claims based on infringements of personality rights (Art. 33(2) PILA). According to Art. 132 PILA, the parties may agree that the law of the place of jurisdiction will apply, whereby the choice of law may be made tacitly. In the present case, both parties refer to the Swiss legal system (file 1 para. 19 et seq.; file 18 para. 21 et seq.), thus constituting an implicit choice of law. Swiss law is thus applicable (see Rodriguez/Krüsi/Umbricht, Basler Kommentar, loc. cit., Art. 129 PILA no. 6; Amstutz/Wang/Gohari, Basler Kommentar, loc. cit., Art. 116 PILA no. 40; see also with regard to the prerequisites for a choice of law: Heini/Goksü, Zürcher Kommentar, 3rd ed. 2018, Art. 132 PILA nos. 4–5 and Kren Kostkiewicz, Zürcher Kommentar, loc. cit., Art. 116 PILA no. 48; Art. 132 PILA; file 1 p. 5 and file 8 para. 13). The Cantonal Court of Zug thus has jurisdiction to hear the present dispute. Moreover, it is undisputed that all legal claims must be assessed in the ordinary proceedings (see Art. 90 and 243 CPC; file 1 para. 30; file 18 para. 8).

2.3 The Swiss Civil Procedure Code governs proceedings before the cantonal courts for contentious civil matters (Art. 1(a) CPC). According to practice, proceedings are deemed to be a civil matter if they seek the definitive, permanent settlement of civil law (private law) relationships via an administrative decision (Vock/Aepli, Basler Kommentar, loc. cit., Art. 1 CPC no. 3). In this context, the question arises in particular as to the delimitation between public law matters (and matters to be dealt with in administrative proceedings) and civil law matters (see Domej, loc. cit., Art. 59 CPC no. 17; see decision and judgment of the Cantonal Supreme Court of Zurich LB160037 of 9 August 2016 consid. III. 1.a). Whether a case is a civil matter (or a public law matter) depends on the legal nature of the matter in dispute (BGE 149 I 25 consid. 4.4.4 and 144 III 111 consid. 1.3 in: SZZP 2018 p. 83). The legal nature of the matter in dispute is determined by the relief sought and the claimant's submissions (Vock/Aepli, loc. cit., Art. 1 CPC no. 3). The decisive factor is whether the

parties have asserted claims under federal civil law and whether such claims are also objectively disputed (BGE 129 III415 consid. 2.1). The question as to whether claims under federal private law are disputed is deemed a civil law matter (see BGE 128 III 250 consid. 1a).

2.4 The question of whether a private law claim exists concerns both the prerequisites for admissibility as well as the substantive merits of the action itself and must accordingly be treated as a fact of dual relevance (see BGE 144 III 111 consid. 1.3 in: SZZP 2018 p. 83; judgment of the Federal Supreme Court 4A_582/2014 of 17 April 2015 consid. 1.1). The procedure to be followed in the event of facts of dual relevance is decided – even in the present international context – in accordance with the national laws applicable to the court before which the proceedings have been brought (see BGE 134 III 27 consid. 6.2). According to the Swiss theory of dual relevance, the court examines its jurisdiction exclusively on the basis of the allegations, the grounds of action and the prayers for relief (the claim asserted and the grounds therefor) without taking into account the defendant's objections and without hearing any evidence (see BGE 147 III 159 consid. 2.1.2 and 141 III 294 consid. 5.2). Even if such facts are disputed, they must be presumed to be true according to the Swiss theory of facts of dual relevance for the purpose of assessing the admissibility of the action. They are examined only as part of the substantive examination of the asserted claim; objections of the opposing party in this regard are generally not taken into account for the purpose of determining admissibility (see judgment of the Federal Supreme Court 4A_582/2014 of 17 April 2015 consid. 1.1; Bohnet/ Droese, ZPO Präjudizienbuch, 2nd ed. 2023, Art. 60 CPC no. 10). Facts of dual relevance do not have to be proven; rather, they are simply regarded as given on the basis of the claimants' legal submissions. It is necessary and sufficient for the claimants to allege the facts of dual relevance correctly, that is, in a manner that allows the court to assess its own jurisdiction (see BGE 147 III 159 consid. 2.1.2 and 141 III 294 consid. 5.2). As a general rule, it is not necessary to examine whether the claimant's statements are correct in order to reach an independent decision on a procedural requirement (see judgment of the Federal Supreme Court 4P.17/2001 of 18 April 2001 consid. 3c).

However, the doctrine of facts of dual relevance does not exempt the court from examining, when considering the merits of the case, whether the facts of dual relevance alleged by the claimant – which must be presumed to be true – are conclusive and, from a legal point of view, even capable of establishing the court's jurisdiction (Bohnet/Droese, loc. cit., Art. 60 CPC no. 10). When examining the merits of the case, it is therefore the duty of the court to subsume the claimant's allegations of fact, which for the purposes of this examination must only be presumed to be true with regard to facts of dual relevance, and to examine its legal characterisation, in so far as it is relevant for the merits of the case. In this regard, it is not appropriate, based on the theory of facts of dual relevance when determining admissibility, to assume that the claimant's legal view on the qualification of the claim is just as correct as the alleged facts of dual relevance are presumed to be true. Rather, the court must conduct its own legal verification (BGE 144 III 111 consid. 4.1 in: SZZP 2018 p. 83; Art. 57 CPC).

Therefore, if it is disputed whether a dispute is under private law or a public law, the court before which the proceedings have been brought must rely on the submissions made by the claimant, i.e. the prayers for relief and the grounds therefor. Then, as a rule, a comprehensive legal examination must take place of the facts alleged by the claimants, assuming

they are correct. Difficulties arise where issues of fact and law are difficult to separate and where complex facts or situations bordering on the limits of a legal norm are involved. In this respect, the question arises as to whether a less intensive legal examination may not suffice for the purpose of assessing conclusiveness based on the Claimant's allegations – in so far as this does not limit the Claimant's right to justice – since a full legal examination of the facts of dual relevance is required in any event after the evidence has been heard. If the issue of delimitation is difficult, the Federal Supreme Court will rely on the conclusive allegations of the Claimant and only assess the legal question in its entirety after the evidence has been heard in the context of the merits of the action (see Baumgartner, Doppelrelevante Tatsachen, recht 2022 p. 12; BGE 142 III 466, consid. 4.1; judgments of the Federal Supreme Court 4A_510/2019 consid. 2 and 4.3 and 4A_573/2015 consid. 5.2.2). The legal characterisation of the facts by the claimant is not decisive. If the claimant describes the alleged legal relationship as a private law relationship even though it is actually a public law relationship, the civil courts must decline jurisdiction (BGE 135 III 483 consid. 1.1.1; Berger/Güngerich/Hurni/Strittmatter, Zivilprozessrecht, 3rd ed. 2025, para. 17).

An exception to the application of the dual relevance doctrine exists in the event of an abuse of rights on the part of the claimants, for example if the claim is filed in a form that seeks to conceal its true character, or if the allegations are manifestly false. In such cases of abuse, the opposing party must be protected from the claimants' attempts to bring them before a court of their choice. Furthermore, the above theory is not applicable if a State invokes the issue of immunity within its jurisdiction (BGE 147 III 159 consid. 2.1.2 and 141 III 294 consid. 5.2). The defendant's rebuttals and divergent submissions are not wholly irrelevant in this respect. In this context, they serve as indications as to the degree to which the claimants' allegations are disputed, and thus also allow the assessment of whether the claimants' allegations of abuse of rights may be relied upon (see judgment of the Federal Supreme Court 4P.17/2001 of 18 April 2001 consid. 3c). However, if the Defendant states that the theory of dual relevance applies only exceptionally in this context, this cannot be accepted (file 36 para. 145- 151). The Federal Supreme Court decision 124 III 382 cited by her addresses the theory of dual relevance in the case of immunity, whereby this case is understood as an exception to the rule. It is hardly compatible with the principle of immunity to compel a State to proceed on the merits if it is seeking to evade the jurisdiction of another State on the basis of its own sovereignty. The interest of a State in invoking its jurisdictional immunity requires that this question be resolved before all others (BGE 124 III 382 consid. 3b). This situation is in no way comparable to the present case.

2.5 If the court examines the existence of a fact of dual relevance – as is customary for procedural requirements – at the level of admissibility, it may not, in accordance with Art. 59(1) CPC, hear the action if the fact of dual relevance does not exist. If, on the other hand, it turns out that the fact of dual relevance does exist, the action will thereby be determined to be admissible, and the court will examine the other factual requirements for the applicable provision for the claim (see Baumgartner, loc. cit., p. 2; Bohnet/Droese, loc. cit., Art. 60 CPC no. 10).

A decision finding jurisdiction in application of the doctrine on facts of dual relevance is an interim decision in the sense of Art. 237(1) CPC. It is immaterial in this regard that the issue of whether the facts of dual relevance actually exist has not yet been examined. The conclusions reached in the interim decision with regard to jurisdiction solely based on the claimant's submissions are neither final nor relevant for the assessment of the merits of the case. Once evidence has been heard in respect of facts of dual relevance, the court may conclude that, notwithstanding its decision to consider the case, it does not actually have jurisdiction. However, it cannot and must not then make a fresh decision on its jurisdiction, particularly as it cannot revert to its decision on whether to consider the case; rather, it must then dismiss the action with a judgment on the merits (Bohnet/Droese, loc. cit., Art. 60 CPC no. 10–11). Thus, if it emerges only during the examination of the merits that the fact of dual relevance is not present, the court will dismiss the case instead of refusing to hear it. This solution is dogmatically impure because, despite the inadmissibility of the action, the court issues a decision on the merits – namely, that the action is to be dismissed. However, it has the advantage for defendant that, if there are no facts of dual relevance, the action is definitively dismissed once and for all, i.e. it cannot be reassessed by a (different) court (see Baumgartner, loc. cit., p. 3).

The Federal Supreme Court held that the dual relevance theory was justified in its result. If, once the evidence has been heard, the existence of a fact of dual relevance is established, the jurisdiction recognised on the basis of the dual relevance theory corresponds to reality; if, on the other hand, the existence of that fact is not proven, the court will dismiss the action by a final judgment, an outcome that is in the interests of the defendant. In such a case, claimants who have decided to file their action before a special court have no interest in subsequently pursuing it further before an ordinary court or another special court (BGE 147 III 159 consid. 2.1.2 and 141 III 294 consid. 5.2).

3. In their statement of claim, the Claimants are seeking to have the Defendant compelled to reduce its CO_2 emissions and are seeking compensation and damages for pain and suffering. They argue that these claims are based on the protection of personality rights. Since the infringement of personality rights is not only a prerequisite for the Claimant's claims but also serves as a basis for the – disputed – material jurisdiction of the Zug Cantonal Court, this fact is of dual relevance. Therefore, in order to assess the legal nature of the matter in dispute, the Claimants' submissions must first be relied upon and examined to determine whether they are conclusive (see consid. 2.3).

3.1 In summary, in support of their claims, the Claimants state that the Defendant, one of the world's largest cement manufacturers, emits too much CO_2 and thus contributes to climate change. Over the course of its company history, it has emitted more than twice as much CO_2 as Switzerland. Its climate strategy is inadequate and further exacerbates climate change. As a result of the rise in sea levels caused by climate change, the island of Pari, where the Claimants lived, is increasingly subject to severe flooding. This flooding contaminates its drinking water wells with salt, makes fishing impossible, endangers tourism and causes damage. As a result, the Claimants’ health,

physical and psychological well-being and economic development are being harmed. In addition, they are suffering from serious anxiety and fears. Their psychological trauma is so heavy that there is an intangible hardship.

If global warming continues unchecked, the island of Pari will be uninhabitable in a few decades. With effective measures such as the desired reduction of CO_2 emissions, the rise in local sea levels in Pari would be reduced, thereby counteracting the increase in flooding. This would enable the island of Pari to remain habitable for the centuries to come. The purpose of the lawsuit is to secure the Claimants' livelihoods, their cultural values and their island community for the foreseeable future. As the parent company, the Defendant dictates the climate strategy for its subsidiaries in a binding manner and thus collaborates with its subsidiaries to violate personality rights and cause the losses incurred, for which it is jointly and severally liable together with its subsidiaries. Therefore, in order to protect the Claimants' personality rights, based on Art. 28 et seq. of the Swiss Civil Code (*Zivilgesetzbuch*, SCC), the Defendant is to be prohibited from emitting CO_2 to the extent requested in accordance with point 1.1 of the prayer for relief. In addition, the Defendant is to be compelled to contribute financially to the measures necessary to protect the island of Pari, to compensate for the financial losses caused by the flooding and to pay damages for pain and suffering for the intangible hardship. Specifically, pursuant to Art. 41 et seq. of the Swiss Code of Obligations (*Obligationenrecht*, SCO), as a result of the CO_2 emissions, which infringe personality rights, the Defendant must pay for the existing and future damage to property pro rata with its share of 0.42% of global greenhouse gas emissions. It has actively interfered in absolute legal interests such as life and limb, freedom, personality, property and possession and will continue to do so. Since these are absolutely protected legal interests, the infringement of personality rights is unlawful. There is also an adequate causal link between the unlawful infringement of personality rights on the one hand and the damage to property on the other. Every tonne of greenhouse gas emitted has a long-term effect on the climate, as carbon dioxide in the Earth system is broken down only very slowly. The Defendant has a duty of care based on human rights to reduce its greenhouse gas emissions. It must ensure that the global average increase in temperature caused by its emissions does not exceed pre-industrial temperatures by more than 1.5°C. However, the Defendant is not doing enough to respect this limit, which is why it should be required to reduce its CO_2 emissions to the extent sought (file 1, para. 195-206 and 276-320; file 56 para. 20-27, 30-34 and 38-46).

Claimant 1 claims in particular that in November and December 2021, around 60% of her fish farm stock was destroyed by the floods and that tourists refrained from visiting the island of Pari for around two months. As a result, the island suffered losses to its fishing and tourism. In addition to the loss of income from those two sectors, damage to her breeding enclosures had also occurred. Rises in rises in sea levels have already had a negative impact on her economic existence and progress. As flooding is occurring with ever-increasing frequency, similar adverse effects are to be expected in the future (file 1 para. 68–78). Claimant 2 alleges that, without man-made climate change, his house would not have been flooded or only minimally flooded. The contamination of the house and groundwater had a negative impact on his hygiene, well-being and quality of life. As a mechanic, he has been unable to work for several days after the floods

and unable to earn an income, which poses a threat to his existence. In addition, he also suffered damage to property and financial losses (file 1 para. 68-69 and 84-93). Claimant 3 also complains of the threat to his economic existence because the flooding has caused the death of fish and the destruction of working equipment such as boats and tools. In particular, his fishing boat has already been washed away and damaged in the past (para. 99-108). Finally, Claimant 4 also argues that the flooding adversely affects his fish stocks and the tourism industry and threatens his economic existence (file 1 para. 114–120).

Their prayers for relief and submissions on the facts are seeking the protection of their personality rights from the Defendant's unlawful infringements. Whether their personality rights have been violated and which legal consequences would result from this is answered by substantive law in accordance with Art. 28 et seq. SCC in conjunction with Art. 41 and 49 SCO. Their claims are thus private law claims (file 40 para. 41-43).

3.2 The Defendant does not argue that the Claimants' coherent and conclusive assertions are spurious or even constitute an abuse of rights, which is why, pursuant to the theory of facts of dual relevance, they must for the time being be regarded as true in the context of the examination of admissibility.

3.3 The legal characterisation of this situation is a question of law (see consid. 2.3), which is why it is not possible to simply rely on the Claimant's view that the present dispute is a civil matter. It is precisely this classification under private law that is disputed between the parties, particularly as the Defendant's assumption is that the claim is a matter of public law. The classification of a matter in dispute as falling under private law or public law depends on whether the parties are bringing claims under federal civil law and whether those claims are objectively disputed or whether the claims in question fall under public law (BGE 135 III 483 consid. 1.1.1 and 115 II 237 consid. 1a). The boundary between private law and public law disputes is fluid. It must be determined for each specific legal relationship. Practical problems arise in particular when the State and citizens (private individuals) face each other in proceedings (Berger, Berner Kommentar, loc. cit., Art. 1 CPC no. 9).

To distinguish between private and public law, doctrine has developed several methods, in particular interest, function and subordination theory, as well as modal theory. In this context, it is important to consider whether the disputed legal principle exclusively or predominantly serves private or public interests (interest theory), whether it has as its object the performance of public duties or the exercise of public activity (function theory), whether the acting organisation deals with private individuals as the holder of sovereign authority (subordination theory) or whether the norm has effects or consequences under civil or public law (modal theory; Berger, loc. cit., Art. 1 CPC nos. 10–13). The Federal Supreme Court also draws a delineation based on these methods, whereby none of these methods prevail a priori (pluralism of methods). Rather, it examines in each individual case which delimitation criterion best corresponds to the specific circumstances. It thus takes account of the fact that the distinction between private and public law has very different functions that cannot be captured by a single theoretical distinguishing feature (see BGE 149 I 25

consid. 4.4.4 and 144 III 111 consid. 3 in: SZZP 2018 p. 83; BGE 138 I 274 consid. 1.2 and 138 II 134 consid. 4 et seq.).

3.4 The Claimants assert in summary in this regard that all of the parties are subjects of private law. They argue that it follows from the prayers for relief relevant to the subject-matter in dispute and the submissions on the merits that the claims are based on Art. 28 SCC as well as Art. 41, 49 and 55 SCO, thus constituting claims under federal civil law and not public law. The aforementioned statutory provisions are not intended to fulfil public duties, but to protect their private interests. The release of greenhouse gases constitutes a private activity of the Defendant. The action seeks to protect private legal interests and requests that these interests be enforced by means of civil enforcement law. The aim of the proceedings is to achieve a definitive settlement of the dispute in the sense of res judicata. In contrast, the Defendant is not addressing the subject-matter of the dispute, but climate protection in general. However, this is not the subject-matter of the present proceedings, which is why it is irrelevant that, in principle, public bodies are responsible for climate protection. Since the issue is the protection of individual rights and not the enforcement of climate protection measures by the authorities, it is irrelevant whether public interests exist in addition to private interests in avoiding excessive greenhouse gas emissions. Even if the action were in the public interest, it is not a matter of public law. Finally, the present action has no recourse under public law, and upholding the action would not result in any public law sanctions. The matter in dispute is therefore a civil law matter (file 26 para. 3–4 and 85–115).

3.5 The Defendant contends, in summary, that the legal view held by the Claimants and the legal bases relied on by them are irrelevant. The factual circumstances described by the Claimants do not concern their personal situations, but rather the complex problem of global greenhouse gas emissions by internationally active companies and their effects on low-lying coastal regions. However, civil litigation is designed to resolve a bilateral conflict, i.e. to resolve the matter in dispute in each individual case. A civil case exists where at least two persons are involved in the proceedings (whether private individuals or public authorities), the subject-matter of the dispute is of a private law nature and the relationship between the parties is finally settled by way of res judicata. If the positions concerned are positions in public law, there is no civil case. The Claimants and the non-governmental organisations backing them (hereinafter: NGOs) are in fact not concerned with defending against an infringement of personality rights, but with forcing a political decision on greenhouse gas emissions or climate protection measures, as the case may be. The civil courts are not competent to issue such a decision. This is also known to the NGOs in charge of these proceedings, who themselves have repeatedly publicly highlighted the fundamental challenges of so-called horizontal climate lawsuits.

Climate protection is guaranteed via public law mechanisms. The Paris Agreement, which Switzerland ratified on 6 October 2017, obliges its contracting States to set national targets for reducing greenhouse gas emissions and to take measures to keep global warming at lower than 2°C above pre-industrial levels. The aim is to set a limit of 1.5°C. The Agreement is an international treaty that is not directly enforceable (i.e. not self-executing). In order for it to serve as a basis for the application of the law in individual cases and to establish rights or obligations for private individuals, it must first be implemented through national legislation. The Paris Agreement does not therefore contain any direct obligations for private undertakings. The federal legislature, i.e. the legislative authority, is responsible for

enacting climate protection measures. In Switzerland, the Paris Agreement is being implemented through the Climate Act (*Klimagesetz*) and the CO_2 Act (*CO_2-Gesetz*). The CO_2 Act in particular is aimed at reducing CO_2 emissions. For this purpose, persons liable to pay tax under the Mineral Oil Tax Act (*Mineralölsteuergesetz*) have to pay a levy on the manufacture, extraction and import of heating fuels. The Climate Act, on the other hand, aims to reduce the consumption of fossil fuels without banning their use altogether. According to legal requirements, greenhouse gas emissions are to be halved by 2030 compared to their 1990 levels. Companies are obliged to reduce their emissions as much as possible and remove the remaining emissions from the atmosphere using negative emission technologies in order to achieve the net zero emissions target. Roadmaps are to be drawn up by the companies concerned.

The Federal Council can submit motions to implement the targets set by the Federal Assembly, which must then be implemented within the framework of the CO_2 Act. Any obligation incumbent on private companies would therefore require prior amendments to the law by Parliament. These are complex balancing decisions, which must be taken at political level and with due regard for the participation rights of all parties concerned. Climate protection legislation cannot be tightened up through civil lawsuits. Developing legal practice on private law emission bans that runs contrary to the conclusive public law provisions of the federal legislature is inadmissible. Under the framework legislation of the Climate Act, new rules or bans would require the same democratic legitimacy as the Climate Act or a federal act in the formal sense. Since climate protection is a matter of public law, there is no civil law case. In addition, Switzerland is already committed to tackling climate damage and is also financing projects in Indonesia. The action thus seeks to vicariously perform public duties, which is why the existence of a disputed civil matter must once again be denied (file 18 para. 3-4 and 22-28; file 36 para. 14-27 and 64-66).

The action is also part of a global campaign by NGOs to fight climate change through activist climate lawsuits, as they consider the political legislative process to be too slow. The leading NGOs abuse the civil process as a platform for their publicity and lobbying work at a political level. The intention is to tighten the regulatory framework for climate protection by bringing about far-reaching societal changes through strategically managed individual legal actions. According to these NGOs' own statements, the aim is to overcome the challenges of climate change in society. Both the Claimants and the Defendant were arbitrarily selected by the Hilfswerk der Evangelischen Kirchen Schweiz foundation (HEKS). Since both parties are interchangeable at will, the focus is not on the protection of the individual rights of the Claimants but on the endeavour to enforce political decisions by means of private law. The Claimants have also

acknowledged that climate justice affects millions of people. Thus, the subject-matter of the action is climate protection measures. Moreover, this claim is intended to have a deterrent effect on other undertakings. However, the deterrence of third parties, if it is a matter at all, is a matter of public law. It is the nature of the matter that all people – and thus also the Claimants – are affected by climate change. Climate protection serves to prevent the over-exploitation of the global climate, which is classified as an indivisible, global and public good. The regulation of public goods is a public task. The interest of the Claimants therefore does not differ from the general interest of the population, but is entirely absorbed into it. Since climate protection, a task of public bodies, serves the protection of fundamental collective interests and ultimately the survival of humankind, this is a public law issue according to the function and interest theories.

The central instrument for enforcing climate protection regulations is currently the public law CO_2 tax, which is levied by the State. The emission of CO_2 is therefore not prohibited by law, but controlled by means of an incentive tax. Greenhouse gas emissions are still allowed. The reports of the Intergovernmental Panel on Climate Change (hereinafter: IPCC) are also not a basis for the Claimants' prayers for relief. Private law cannot impose prohibitions that contradict existing public law norms. If the courts were to rule on climate lawsuits, they would assume the role of the legislator, which would be incompatible with the principle of separation of powers. The courts are not empowered to pronounce climate protection measures in the form of emission bans and are therefore not the appropriate bodies to rule on individual reduction obligations. Moreover, current climate protection legislation does not contain any liability provisions. At the political level, no decision has yet been made as to who should bear which burdens in order to achieve the goals of the Paris Agreement and who should be compensated to what extent for any disadvantages. Consequently, any claims for damages and pain and suffering are inadmissible. Any further measures would require amendments to existing legislation. The present action seeks to strengthen the steering effect of the CO_2 tax and to replace sovereign instruments of enforcement. Therefore, based on the modal theory as well as the subordination theory, the present claim is to be assumed to fall under public law. The subordination theory is irrelevant anyway, as the present circumstances are atypical. The civil jurisdiction of climate actions is thus excluded and the instant court does not have jurisdiction to rule on the merits (file 18 para. 31–102 and 111–122; file 36 para. 33-44 and 49-75).

3.6 The delimitation methods (see consid. 3.3) must be used to examine whether the present action relates to a civil dispute or a matter under public law.

3.6.1 The Claimants are natural persons who do not perform any public law duties. The Defendant is organised as a private company limited by shares and operates as a market player in the construction materials industry and other related industries. It also does not fulfil any duties under public law (see https://zg.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-100.136.893; visited on 3 November 2025). In the present case, the Claimants and the Defendant both have equal status as subjects of private law. Neither party is facing the other as a sovereign authority. Applying the subordination theory, this argues in favour of the dispute being civil in nature.

3.6.2 The same conclusion is reached by applying the function and interest theories. The decisive factor for the concept of a civil law dispute is whether the claim forming the subject of the dispute is governed by federal civil law (see BGE 115 II 237 consid. 1a). Legislation in the field of civil law and the law of civil procedure is the responsibility of the Confederation

(Art. 122(1) of the Swiss Constitution [*Bundesverfassung*], Cst.). The Swiss Confederation's legislative competence in the area of civil law includes in particular the major codifications of private law, the Civil Code (SCC) and the Code of Obligations (SCO). With the enactment of the Civil Procedure Code, the Confederation issued a codification that establishes a comprehensive and conclusive system for contentious civil proceedings (Karlen/Hänni, Basler Kommentar, 4th ed. 2024, Art. 1 CPC nos. 7 and 9). To substantiate their claims, the Claimants are relying on the provisions on the protection of personality pursuant to Art. 28 et seq. SCC as well as on the liability provisions pursuant to Art. 41 et seq. SCO. It is therefore necessary to examine whether those provisions can be considered as a legal basis for the claims made.

3.6.2.1 Art. 28 et seq. SCC protect personality rights against unlawful infringements by third parties (Hotz, Kurzkommentar ZGB, 2nd ed. 2018, Art. 27 SCC no. 1). Any person whose personality rights are unlawfully infringed may petition the court for protection against all those who contribute to that infringement and, in particular, may request that any imminent infringement be prohibited or that an existing infringement be remedied (Art. 28(1) in conjunction with Art. 28a(1) no. 1 and 2 SCC). Any legal entity, i.e. natural and legal persons and bodies of persons with legal capacity, is entitled to sue. Anyone who contributes to an infringement of personality rights has standing to be sued. However, no action pursuant to Art. 28 SCC may be taken against States and other public law bodies acting within the scope of their sovereign powers. Personality rights exclusively govern relationships between private individuals (see Meili, Basler Kommentar, 7th ed. 2022, Art. 28 SCC nos. 32 and 37; judgment of the Federal Supreme Court 2C_37/2018 of 15 August 2018 consid. 8). Accordingly, the statutory provisions on the protection of personality rights do not contain or regulate any public law duties, nor do they operate to perform administrative activities. The protection of personality rights thus has no public law function.

Personality rights are absolute rights with effect against everyone. The legislature has deliberately refrained from defining the term “personality”. Instead, it has designed Art. 28 of the Swiss Civil Code as a general clause to enable the law to develop further and adapt the term to keep pace with changes in values over time. In particular, it is incumbent upon doctrine and case law to define the concept of personality in more detail (Dörr, Kurzkommentar ZGB, 2nd ed. 2018, Art. 28 SCC nos. 1 and 3). The subject-matter of the protection of personality rights is the personality. The person and personality encompass people in their intellectual capacities as well as in the expression and development of these capacities. From a legal point of view, in the right to personality, “the individual enters into the legal order as an indivisible and unassailable being, as represented by the human being, with their dignity and freedom. Just as the nature of personality cannot be reduced to fixed limits, the content of the general right to personality cannot be defined conclusively”; there is no numerus clausus of personality rights (see Meili, loc. cit., Art. 28 SCC no. 5). In other words, the personality is the

"totality of the individual, that which can only be attributed to a specific person in its uniqueness, in so far as it may be the subject of infringing conduct. Personal circumstances, as a "detail of the world", include not only the person himself or herself but also facts of the physical and social outside world, such as objects (e.g. photographs), rooms (e.g. the home) or the mental attitude of other persons, i.e. the reputation one enjoys in the eyes of others." The right to personality confers on its bearer the power under private law to rule over their personal property, in principle free from the influence of third parties (BGE 143 III 297 consid. 6.4.1–6.4.2). Personality as understood in this way is a unitary legal asset that nonetheless consists of many facets. However, these individual facets or personal qualities should not be understood as exhaustive. Art. 28 SCC thus remains open for any asset that is inseparably linked to the person of its bearer. Based on the most common categorisation in the prevailing doctrine and case law, personality assets can be divided into physical, psychological (or emotionally affective) and social scopes of protection (see Hefti, Deliktsrechtliche Klimaklagen in der Schweiz, ex ante 2/2023 pp. 75 et seq.; Meili, loc. cit., Art. 28 SCC no. 17).

The physical area of protection protects bodily integrity and personal freedom, which is to be understood in a broad sense. The psychological or affective scope of protection covers people's emotional life and thus their psychological and spiritual well-being. The social scope of protection encompasses the relationship between persons and society. A wide variety of claims for protection can be derived from this. The right to privacy is one aspect of the social scope of protection. A person's psychological state also falls under the sphere of privacy and thus within the social scope of protection. The protection of personality also includes economic freedom. As the civil law counterpart to Art. 27 Cst., it specifically guarantees the free economic development of a person. This means that persons can freely engage in private-sector employment and contribute their labour, skills and knowledge at their own discretion in return for payment. The Federal Supreme Court recognises that everyone has the right to manifest his or her personality in the economic sphere. An infringement of personality rights in this area occurs when measures are taken that impair a person's economic development (Meili, loc. cit., Art. 28 SCC no. 17 et seq., 25 and 31; Hefti, loc. cit., pp. 77 et seq.). Personality rights are violated by attacks on physical and psychological integrity. This also includes conduct that terrorises and frightens others and endangers or significantly disrupts their psychological well-being (see Federal Supreme Court judgment 6B_1094/2019 of 25 June 2020 consid. 2.2). However, not every impairment of personality rights, particularly the most minor impairments, can be regarded as a legally relevant infringement. The infringement must reach a certain degree of intensity. The subjective sensitivity of the person concerned is irrelevant. An objective standard must be applied to assess the severity of the interference (see Federal Supreme Court judgment 6B_1094/2019 of 25 June 2020 consid. 2.2).

3.6.2.2 According to the Claimants, the floods on the island of Pari caused damage to their homes and the loss of their personal belongings. In addition, fishing has declined and tourism has collapsed. As a result, their existential livelihoods have been impaired. Rising sea levels and the threat of increased flooding have caused the Claimants to be very concerned and to suffer from existential fears because the island of Pari is in danger of sinking. This

is harming their psychological and spiritual well-being and affecting their psychological scope of protection. The floods have also restricted the Claimants' economic activities, since they are no longer able to pursue their ancestral occupation as traditional fishermen and were forced to abandon their residence on the island of Pari and thus their activity in the tourist sector because of rising sea levels. They would no longer be free to decide how and where they could use their labour, skills and knowledge. Furthermore, with rises in the sea level, the risk of physical injury would also increase, which would impair their bodily integrity (see consid. 3.1).

The impairments asserted by the Claimants affect the scope of protection of their personality rights under Art. 28 SCC. If the Claimant's statements are held to be true, climate change is affecting their bodily integrity and their personal freedom. Since greenhouse gas emissions from companies such as the Defendant are undisputedly partly responsible for climate change (file 18 para. 178-187, in particular para. 183 referring to file 18/42 pp. 74 et seq.), the Claimants may rely in their claims against the Defendant in accordance with points 1.1 and 1.2 of the prayers for relief on the protection of personality rights pursuant to Art. 28 et seq. SCC, thereby asserting personal claims under federal civil law.

3.6.2.3 The Claimants’ claims for damages and their claim for pain and suffering are related to the alleged infringement of personality rights, which is why personal interests are pursued with regard to points 2 to 5 of the prayer for relief as well. The Defendant incidentally also assumes that the prayers for relief are linked (see file 36 para. 209). In the event of an infringement of personality rights, the injured party has the right to claim financial compensation from the infringer. If the injured party has suffered loss or damage, the infringer is liable for that loss or damage. Claims for damages serve to compensate for the pecuniary loss associated with such an infringement. In this regard, pursuant to the general provisions of Art. 41 SCO, the Claimant must prove not only financial loss but also the fault of the Defendant and an adequate causal link between the infringement and the damage. Culpable conduct exists when the person responsible for the infringement acted intentionally or negligently (see Art. 28a(3) SCC; see Meili, loc. cit., Art. 28a SCC no. 15 et seq.). Furthermore, Art. 49(1) SCO expressly provides for a claim to the payment of a sum of money to compensate for pain and suffering in cases of infringements of personality rights, provided that this is justified by the seriousness of the infringement and no other remedy has been provided.

Private tort law – on which the Claimants are relying for their claims for financial compensation – has the primary purpose of imposing the threat of liability to prevent or restrict harmful conduct on the part of subjects of private law. State authorities are only liable where and in so far as liability is expressly established by a “written or customary provision of federal or cantonal law; without such a provision, there is no liability” (see Kessler, Basler Kommentar, 7th ed. 2020, Art. 61 SCO nos. 3–4). It follows from this that the law on tort governed by the Swiss Code of Obligations primarily governs liability between private individuals and thus also falls under civil law. The law of tort as part of private law therefore aims to protect the legal interests of private law subjects. Public goods such as the climate are not relevant from the perspective of tort law (see Roberto/Fisch, Zivilrechtliche Klima-Klagen, AJP 2021 p. 1236).

3.6.2.4 Against this backdrop, the non-contractual liability provisions of private law serve as a basis for the claims asserted by the Claimants in points 2 to 5 of their prayer for relief. Accordingly, the Claimants are also asserting federal civil law claims in this regard.

3.6.3 In the present dispute, it is then necessary to examine whether the Defendant's conduct alone is adversely affecting or had adversely affected the Claimants – and indeed only the Claimants – and whether any rights and obligations arise between the parties on the basis of federal civil law. In order to do so, the courts do not have to implement any new universally applicable climate protection targets, but rather enforce existing regulations. In this respect, court decisions do not replace climate protection policies that are democratically legitimised or need to be legitimised; instead, they complement them. Approving the statement of claim would primarily have consequences only for the Defendant, but would not have any direct impact on other so-called “carbon majors”, whose greenhouse gas emissions also contribute to climate change. Since it is a matter of enforcing the law and protecting the individual legal interests of the involved parties, there are no legal consequences of a public law nature arising from protecting the Claimants' personality or from any related financial consequences for the Defendant. Thus, the Defendant's argument that the action concerns climate protection measures and thus a public law task does not hold. Accordingly, the modal theory does not support the assumption that the present dispute is of a public law nature either.

3.6.4 In conclusion, it should be noted that the present dispute is a justiciable civil law matter according to the subordination theory, the function and interest theories and the modal theory.

3.7 Contrary to the Defendant’s position, this does not undermine the principle of the separation of powers (see file 18 para. 97 et seq.). In legal disputes, every person has the right to have their case decided by a judicial authority. The Confederation and the Cantons may legislate to exclude judicial review in exceptional cases (Art. 29a Cst.). This provision establishes a right under individual law to judicial protection – i.e. to adjudication by a judicial authority with a full review of the facts and the law, provided that a legal dispute exists. The Federal Supreme Court interprets the term “legal dispute” as meaning that the dispute must be connected with an individual legal position worthy of protection. Although the Confederation and Cantons may by law exclude judicial review in exceptional cases, this applies to decisions that are difficult to judicially enforce, such as government acts, which essentially raise political issues and are not suitable for judicial review. However, the exception to the guarantee of access to justice for “decisions of a predominantly political nature” must be interpreted narrowly. The political nature of the matter must be obvious. It is not enough for the matter to be of political importance. On the contrary, this consideration must undoubtedly be at the forefront in such a manner that any private interests at stake fade into the background. Judicial review may be excluded due to the political content of a decision or its political context. Consequently, the concept of a predominantly political character is characterised in particular by a lack of justiciability as well as the specific structure of democratic participation rights and the related aspects of the separation of powers. The jurisdiction

of a higher political authority or the granting of discretion in decision-making are possible indications of the existence of a political nature, but in and of themselves do not justify an exception (see BGE 149 I 146 consid. 3.3.1–3.3.3).

3.7.1 According to Art. 3 of the Climate Act (CIA), the current goal in climate protection is to reduce greenhouse gas emissions. Pursuant to Art. 12(1) CIA, the provisions of other federal legislation must be structured and applied in such a way that they contribute to achieving the objectives of the Climate Act. Even if the federal government makes reference in this regard to legislative decrees in the areas of CO_2, the environment, spatial planning, road and air traffic and mineral taxation, the SCC and the SCO do not explicitly exclude this, as the list is not exhaustive (see file 18/13 p. 7). The Climate Act is thus the material legislation for authorities applying the law (see Art. 190 Cst.). Therefore, in the present dispute concerning infringements of personality rights and the related claims for damages and compensation for pain and suffering that arose in connection with climate change, there is no statutory basis for explicitly excluding the jurisdiction of the civil courts.

In so far as the Defendant is arguing that this action is not of a civil law nature on the basis that a court obligation to reduce greenhouse gas emissions and to pay damages and compensation for pain and suffering would constitute an ultra vires implementation of the targets to reduce greenhouse gases set by the federal legislator pursuant to Art. 11(1) CIA (file 36 para. 89), it fails to recognise that this case concerns the application of civil law provisions on the protection of personality rights in the light of climate change and not the stipulation of public law climate protection measures. The judicial system is not in fact being called upon to do the latter. Such measures are only legally relevant and the legitimate subject of legal scholarly consideration once they have been enacted, i.e. once they have successfully gone through the political process and entail legally binding obligations – whether for state actors or for private individuals (see Roberto/Fisch, Umweltrechtliche Verantwortung transnational tätiger Unternehmen, Jusletter 27 November 2023, no. 2 [https://jusletter.weblaw.ch]). However, the courts, not the legislature or the executive, are competent to adjudicate alleged infringements of the law.

3.7.2 Several levels of regulation are involved in climate lawsuits against companies: fundamental and human rights, international standards and international treaties, each of which is linked to and meshed with a liability provision or claim under civil law. Under Swiss law, the relationship between fundamental and human rights and private law situations is discussed in the context of what is known as the “third-party effect”. Doctrine and case law rightly reject any direct third-party effect of fundamental rights between private individuals. An indirect third-party effect (or the consideration of fundamental rights when interpreting and applying private law) on the other hand is recognised in various case scenarios. The Federal Supreme Court has already affirmed this on several occasions in private law matters, for example in the area of informational self-determination or freedom of belief and conscience. The right to life and the right to respect for private and family life have not yet been expressly invoked in the sense of an indirect third-party effect. However, it cannot be ruled out that this could happen for the first time in connection with a climate law dispute. Particularly when interpreting open legal norms of private law – such as

the protection of personality rights under Art. 28 et seq. SCC (see consid. 3.6.2.1) – fundamental rights can also be taken into account (see Jentsch, Klimaklagen gegen Rohstoffunternehmen, in: Forstmoser/ Druey [ed.], Schriften zum Aktienrecht, 2021, pp. 77 et seq.; see Jentsch, Etappensieg bei Klimaklage zur Reduktion von CO_2-Emssionen gegen Rohstoffunternehmen, GesKR 2021 p. 332 with reference to BGE 118 Ia 46 consid. 4c and BGE 138 II 346 consid. 8.2; Waldmann, Basler Kommentar, 2nd ed. 2025, Art. 35 Cst. nos. 29 and 59). The Federal Supreme Court has already held in this regard that the provisions of Arts 28 et seq. SCC constitute the implementation in civil law of Art. 8(1) of the European Convention on Human Rights (ECHR) and thus reflect the partial content of this human right (BGE 136 III 410 consid. 6.2). This legal norm protects the right to respect for private and family life and the home and also applies in environmental matters, as the European Court of Human Rights (ECHR) recently confirmed (see judgment of the ECHR no. 53600/20 of 9 April 2024 [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland] § 435 = file 40/2; hereinafter: the KlimaSeniorinnen decision). In this regard, it must be borne in mind that the guarantees of the ECHR afford only subsidiary protection of fundamental rights. Subsidiarity goes hand in hand with the fact that the ECHR secures a European minimum standard that is generally (albeit not consistently) attained by domestic systems of fundamental rights, and is often exceeded (see Villiger, Handbuch der europäischen Menschenrechtskonvention, 3rd ed. 2020, § 11 para. 274). Since the Federal Supreme Court has already recognised this for Switzerland in the past, it follows that an indirect third-party effect of the fundamental right to respect for private and family life can also be considered in civil law disputes relating to climate change.

This is all the more true as an authority applying the law may clarify a legal question that is not even regulated by statute. Court decisions thus serve as a guide when it comes to determining exactly how a law or ordinance is to be applied. As the Federal Supreme Court notes, its decisions can fuel political debate and ultimately lead to Parliament reformulating laws or addressing new issues. The authorities applying the law may thus provide impetus to trigger political debates and ultimately to persuade lawmakers to revise existing laws or create new regulations without the courts establishing generally applicable prohibitions (see https://www.bger.ch/index/federal/federal-inherit-template/federal-faq/federal-faq-31.htm; visited on 3 November 2025). Authorities applying the law may therefore further develop the law without violating the separation of powers. In light of the above, it cannot be assumed that issues concerning climate-related infringements of personality rights are automatically a political matter and that civil courts would thus not have to deal with them.

It is true that climate change undisputedly has a political dimension, as it affects a wide range of public interests beyond individual concerns and influences state action, for example in the areas of infrastructure planning or risk prevention (for the landslide in Blatten, see https://www.bwo.admin.ch/de/newnsb/wdvTXcfYkNbjX1zGthj9 and https://www.vtg.admin.ch/de/blatten-2025; both visited on 3 November 2025). However, contrary to the Defendant's position, this does not preclude the application of civil law. According to the recognised delineation methods, the present dispute is in fact of a civil law nature (see consid. 3.6 et seq.). The Claimants' private interests are not supplanted by the political magnitude of climate change to such an extent that

examination by a civil court would have to be ruled out. To the extent that the Defendant is relying in this regard on decision BGE 147 IV 297 (= Pra 110 2021 No. 133), it should be noted that the facts underlying the aforementioned judgment are not comparable to the present case. Unlike in those proceedings, the Claimants explain here the extent to which they have been personally and specifically affected by climate change (file 36 para. 55).

3.7.3 The Defendant's argument that it is a public law matter due to the political dimension of climate change does not hold. To the extent that the Defendant further asserts that the Claimants' claims are random and arbitrary, it should be noted that this is in keeping with the nature of a civil litigation. Private law subjects may, on the basis of the private autonomy enshrined in federal private law, freely dispose of their rights and thus also of the subject-matter in dispute (see file 26/1 para. 22; file 18 para. 96; Gehri, loc. cit., Art. 58 CPC no. 1).

3.8 Furthermore, as a justification for the lack of a civil law nature of the present dispute, the Defendant refers to the KlimaSeniorinnen decision and asserts that the State's duty to protect in the area of climate protection, derived from Art. 8 ECHR, is judicially enforceable only to a very limited extent and that the enactment of climate protection measures is a matter for democratic decision-making and not for the judiciary, because climate change raises complex scientific, political, economic and other questions. The strict conditions imposed in the KlimaSeniorinnen decision on individual complaints in climate lawsuits against the State must be observed a fortiori in a dispute between private individuals, as these individuals are not bound by any protection obligations (file 36 para. 77-88, 135 and 144; file 46 para. 45-48).

The national proceedings underlying the KlimaSeniorinnen decision were administrative in nature. The appellants in that decision demanded that the Swiss authorities issue a formal ruling on real acts in order to remedy the alleged omissions in the area of climate protection. The judgment thus did not directly concern private law (see KlimaSeniorinnen decision = file 40/2).

The central issue in the proceedings revolved around the victim status of the individual appellants and the association within the meaning of Art. 34 ECHR. The ECHR acknowledged the standing of organisations to appeal (collective appeal), whereas it considered an individual appeal by natural persons in the context of climate change virtually impossible due to the complexity of the matter (in particular, the lack of a single cause or of a single origin of the impairments, as well as complex chains of causation) (as argued by the Defendant, file 36 para. 138–143). The appellants' standing to appeal did not relate to the climate-related damage that they had suffered as a result of a particular event but to government action on climate and the corresponding legislation. Thus, the ECHR ruled on Swiss climate policy, and not on infringements of personality rights. For this reason, the ECHR considered it factually or legally impossible for the individuals concerned to bring an action. Had individual claims been identifiable and enforceable, the circumstances on which the ECHR relied when admitting the collective appeal would no longer have existed. In this respect, the KlimaSeniorinnen decision differs from collective enforcement under private law. Such a class action may involve, for example, a group

of persons who have suffered damage as a result of natural disasters or extreme weather events taking action against private players whose activities have a recognisable and demonstrable impact on climate change. In this situation, an individual action is possible because the damage is identifiable and the corresponding claims can be asserted (as argued by the Claimants, file 40 para. 21). It is therefore for the national courts to determine whether liability exists on the basis of the applicable substantive law and whether the reduction of greenhouse gases is a judicially enforceable law. Thus, the Defendant cannot infer anything for its benefit from the KlimaSeniorinnen decision for the present civil proceedings. It is therefore also irrelevant to the present proceedings that the Council of States and the National Council have commented critically on this decision and accused the ECHR of having rendered a political judgment beyond its competence. These comments are thus irrelevant (file 36/70–73; file 36 para. 95-101; file 46/138 pp. 6–9).

3.9 In addition, the foreign case law cited by the Defendant is not a priori relevant to these proceedings before a Swiss court.

3.9.1 This applies in particular to the case law on so-called vertical climate actions brought by private law subjects against the State as the respondent, which are generally based on a claim under public law (see Roberto/Fisch, loc. cit., p. 1226). Thus, the civil court in Rome had to consider a vertical climate action, i.e. a state liability action and not a horizontal action against a private company (file 36/84). The same applies to the climate action brought by various individual claimants against the Parliament and the Council of the European Union (file 36/120–121), which concerned an action from several individual claimants concerning EU legal provisions of general application and thus – as the Defendant itself states (file 36 para. 206) – concerned a vertical climate action.

3.9.2 The present dispute concerns a horizontal climate action, as it concerns two subjects of private law and is based on a claim under private law (see consid. 3.6.1; Roberto/Fisch, loc. cit., p. 1226). The German civil courts have repeatedly ruled on horizontal climate actions and have subsequently dismissed them as unfounded. Examples include the Regional Court of Braunschweig in an action against the automobile group Volkswagen (file 26/14), the Regional Court of Stuttgart and then the Higher Regional Court of Stuttgart in a claim against Mercedes-Benz AG (file 36/85–86), the Regional Court of Munich and the Higher Regional Court of Munich in an action against BMW (file 26/15 and 36/87) and most recently the Higher Regional Court of Hamm in a private law action against the RWE AG Group (https://rwe.climatecase.org/sites/default/files/2025-06/Judgement%20OLG%2028_05_2025.pdf; visited on 3 November 2025). In particular, the Higher Regional Court of Munich expressly held that the lower court had rightly considered the action against BMW to be admissible, and thus held that the procedural requirements had been met (file 36/87 para. 53-54). In addition, the Higher Regional Court of Stuttgart (file 36/86 para. 37-47) as well as the Regional Court of Munich (file 26/15 para. 47) examined and affirmed the need for legal protection (see consid. 4 et seq. below), thereby implicitly assuming that the disputes were of a civil law nature. In addition, the Defendant also acknowledges that the German civil courts heard horizontal climate cases (see file 36 para. 104-116, 199 and 206; file 36/120–121; file 36/85–87). In addition to German case law, there are also numerous decisions handed down by other foreign courts that have ruled the civil law consequences of

the substantive legal aspects of climate actions. Examples of this include the New Zealand Supreme Court in an action by a private claimant against various legal entities (file 26/20) or the court in The Hague in the Netherlands, which substantively dismissed a claim against the petroleum company Shell at second instance (file 40/3). Even if the court heard the action against Shell because the Dutch legal system recognises the institution of class actions as a way of safeguarding the public interest – created for cases where individuals do not have a sufficient legitimate interest in the proceedings (see file 46 para. 39–44; file 1/65 para. 4.2.2) – Dutch law allowed the class action only to the extent that it concerned the interests of the population residing in the Netherlands, whereas the representation of the interests of the world population outside the Netherlands was explicitly rejected as inadmissible (see file 36/46 p. 1). The civil court at second instance in The Hague found that for the action to be admissible it was sufficient to assert that there was an obligation to reduce CO_2 emissions. A potential need for political decisions to combat climate change does not preclude the admissibility of the action. Rather, a social duty of care on the part of companies to reduce their emissions in spite of existing climate protection regulations could not be ruled out (file 40/3 para. 6.8, 7.11, 7.17, 7.53 and 7.57; file 40 para. 45-47; see Fisch, "Klima- Haftung" von Shell in der zweiten Runde [Part 1], SJZ 2/2025 pp. 127 et seq.). Thus, despite the political nature of climate protection provisions, the court heard the action.

Furthermore, the Defendant cannot infer anything to its benefit from the fact that the Supreme Court of England and Wales did not hear a horizontal climate action (file 36/83 para. 99). The Court refused to hear the claim not because it amounted to an abuse of civil proceedings, but because the Claimant was unable to prove they had the necessary interest to have brought the action in the specific case (file 40 para. 37). The Defendant's suggestion that aid agencies themselves questioned the suitability of private law for compensating for climate damage (file 36 para. 18) is not decisive. The representatives of the aid agencies referred in particular to American court cases that were dismissed for lack of evidence of a causal link between CO_2 emissions and the alleged damage. In one case, private claimants sought damages from various fossil fuel companies in the wake of Hurricane Katrina. In a second case, the residents of Kivalina, Alaska demanded compensation from large hydrocarbon and energy companies due to the threat of having to resettle as a result of coastal erosion (see file 36/44 p. 101). In both cases, however, the matter in dispute was examined on a substantive basis, which means that the claims were heard.

3.9.3 In conclusion, it transpires that foreign courts have predominantly deemed climate actions permissible and examined them from a substantive point of view. The Defendant therefore also cannot infer anything in its favour from foreign case law.

3.10 In summary, the conclusion is that the present case is based on a civil law dispute.

3.11 Disputed civil matters must be heard by the civil courts (Art. 1(a) CPC). Every person has the right to have their case decided by a legally established court (that also has material jurisdiction) (Art. 6(1) ECHR; Art. 30(1) Cst.; judgment of the Federal Supreme Court

5A_955/2019 of 2 June 2020 consid. 2.3.2). While it is true that the provision of Art. 1(a) CPC applies subject to any special provisions of federal law that refer certain disputes to the civil courts or the administrative justice authorities, regardless of their legal nature,jurisdiction that deviates from the basic statutory rule requires a formal statutory basis. According to Art. 164(1) Cst., all important legislative provisions must be enacted in the form of a federal act. Essential procedural provisions such as the material jurisdiction of the courts and the right of appeal must also be enacted in a formal act. This must apply all the more to a provision that not only determines jurisdiction (functional, material or territorial) but also determines legal remedies in an even more fundamental manner by making certain disputes, irrespective of their legal nature, subject to the jurisdiction of the civil courts or the administrative justice authorities (see Federal Supreme Court judgments 4A_275/2021 and 4A_283/2021 of 11 January 2022 consid. 3.2.1 and 3.2.2 and 5A_503/2016 of 23 December 2016 consid. 2.2; Berger, loc. cit., Art. 1 CPC no. 24). There is no special provision derogating from Art. 1(a) CPC in this case, which is why the dispute must be decided by a civil court.

4. It must next be examined whether there is a legitimate interest in relation to the Claimants' prayers for relief.

4.1 A legitimate interest exists if the enforcement of substantive law requires judicial protection. This means: “Any person who invokes judicial protection must [...] have a reasonable and substantial interest in having their assertion in law (prayer for action) upheld in court.” (Zingg, loc. cit., Art. 59 CPC no. 32). This legitimate interest may be factual or legal in nature (Zingg, loc. cit., Art. 59 CPC with reference to the Dispatch on the Swiss Civil Procedure Code, BBI 2006 7276 para. 5.3.2). The distinction between legal and factual interests is not very important for the purposes of traditional civil procedure law. The interests safeguarded are mostly protected by law anyway, since the rules of private law are precisely aimed at protecting the interests of private individuals (Zingg, loc. cit., Art. 59 CPC no. 36). Legitimate interests are assessed on the basis of the prayers for relief filed, i.e. on the basis of the specific allegation of legal consequences and the related application for relief (judgment of the Federal Supreme Court 5A_618/2015 of 2 March 2016 consid. 6.6). As a rule, a legitimate interest is likely to be economic in nature, but is not limited to this type. Conceivable legitimate interests may also be non-material – i.e. not pecuniary – in nature, such as the protection of honour (see BGE 142 III 145 consid. 6.1 with further references). In order to assess the existence of a legitimate interest, the court must conduct an examination of the substantive circumstances underlying the proceedings that must not go beyond the scope of a summary review. The procedural issue of the existence of a legitimate interest in the proceedings must be assessed independently of the prospects of success of the action. A judge who finds the claimant's interest to be protectable is thus not affirming that the action is substantively well founded, but merely finding that granting the petition for relief would have a positive effect on the claimant's legal situation. The accuracy of the prayer for relief is thus presumed and it is merely examined whether there is a sufficient interest on the part of the claimant in having it assessed. Whether a party is actually entitled to the substantive legal relationship asserted must then be decided as part of the judgment process.

In the event of doubt, considerations based on the rule of law operate in favour of affirming the existence of a legitimate interest (see Gehri, loc. cit., Art. 59 CPC no. 7; Zingg, loc. cit., Art. 59 CPC no. 32). Therefore, when it is reviewing the legitimate interest in the proceedings, the court must limit its efforts to a minimum, and, in the event of doubt, based on considerations of the rule of law, must affirm that a legitimate interest exists (see Gehri, loc. cit., Art. 59 CPC no. 7). For the admissibility test, it is sufficient according to case law for the claimants to conclusively assert that the procedural requirements – and thus also the interest in legal protection – are met (Zürcher, in: Sutter-Somm/Lötscher/Leuenberger/Seiler [ed.], Kommentar zur Schweizerischen Zivilprozessordnung, 4th ed. 2025, Art. 60 CPC no. 16 with further references on case law; judgment of the Commercial Court of the Canton of Zurich HG150170 of 30 May 2017 consid. 1.4.3).

If a legally qualified party has several options for enforcing this right, they shall be allowed to choose the legal protection that they deem appropriate or expeditious, provided that they do not plainly abuse the right. The court before which proceedings have been brought is not required to carry out an examination of the appropriateness of the interest in legal relief (Zürcher, loc. cit., Art. 59 CPC no. 13). If a court finds that an individual action has no prospect of success and accuses the Claimant of vexatious litigation on this basis, the action shall in principle not be settled by a decision not to admit the case, but rather dismissed on the merits (judgment of the Federal Supreme Court 4C.45/2006 of 26 April 2007 consid. 6). Even if the scope of protection of personality rights (and thus also the existence of a threat to those rights) is disputed in a certain place, this is sufficient to establish a legitimate interest in the proceedings in the case of infringements of personality rights (see BGE 101 II 177 consid. 4c). In addition, the insignificance of the asserted claim (minima non curat praetor) does not obviate the legitimate interest and therefore does not constitute a negative procedural requirement, unless there is an abuse of rights (Zingg, loc. cit. Art. 59 CPC no. 48).

4.2 Protectable interests generally require a personal interest of the claimant in the action. This means that the claimant must apply to the court in his favour in order to seek to improve his own legal position. Just as substantive private law generally serves to safeguard a person's own interests, so a person must also have a legally protected interest in bringing an action before the court. By contrast, a person who safeguards the interests of third parties, whether private or public, is in principle not worthy of protection, since everyone is obliged to safeguard their own interests and is limited to safeguarding their own interests. However, purely altruistic litigation will hardly ever occur. More relevant are situations in which a person's own interests are at stake, but the interests of others are simultaneously affected to a greater or lesser extent. It is then necessary to consider whether the self-interest carries sufficient weight to justify litigation. In such situations, a common formula, which has to be substantiated on a case-by-case basis, requires the person to be “particularly touched”. However, this does not override the valuation decision as to whether the interest safeguarded is actually worthy of protection (see Zingg, loc. cit., Art. 59 CPC no. 42–43; Gehri, loc. cit., Art. 59 CPC no. 7).

4.3 Prayers for relief made in the proceedings must only be assessed substantively if they are based on a sufficient and typically current interest (see judgment of the Federal Supreme Court 4C.45/2006 of 26 April 2007 consid. 5; BGE 122 III 279, consid. 3a; with regard to the Federal Supreme Court Act [*Bundesgerichtsgesetz*, FSCA], see also

BGE 136 III 497, consid. 2.1 p. 500). Depending on the circumstances, however, this shall not be understood literally. Rather, the interest is determined by the objective of the action and is to be measured by the potential effect and scope of upholding it. In this respect, a future interest may also suffice (see BGE 116 II 196 consid. 2a).

4.4 Finally, the interest must be practical. The action must therefore offer a practical benefit (judgment of the Supreme Court of the Canton of Zug Z1 2023 47 of 22 August 2024 consid. 13.3). A judgment must have a positive effect on the legal or factual situation of the claimant. In this regard, not any type of interest nor any remote possibility that a different outcome of the proceedings might some day still have an impact somewhere is sufficient. Rather, it is necessary that the factual or legal situation of the claimants be influenced with a certain degree of probability by the outcome of the proceedings (see in full: judgments of the Federal Supreme Court 5A_441/2020 of 8 December 2020 consid. 4.1; 4C.45/2006 of 26 April 2007 consid. 6; see also judgment of the Supreme Court of the Canton of Zug Z1 2023 47 of 22 August 2024 consid. 13.3). Procedural law is not available for answering abstract legal questions that do not have an impact on specific legal relationships. In principle, this applies equally to actions for declaratory judgments, actions for performance and actions for a change of legal relationship (see Federal Supreme Court judgments 5A_418/2019 of 29 August 2019 consid. 3.3; 4A_127/2019 of 7 June 2019 consid. 4; BGE 122 III 279 consid. 3a; see also judgment of the Supreme Court of the Canton of Zug Z2 2022 64 of 23 January 2023 consid. 9.1). On the other hand, there is no legitimate interest in the proceedings where the judgment does not bring any benefit to the claimant even if the claimant is successful (judgment of the Federal Supreme Court 4A_127/2019 of 7 June 2019 consid. 4). Such a benefit is generally lacking if the disputed claim has already been satisfied or cannot be satisfied at all (see judgment of the Federal Supreme Court 4A_127/2019 of 7 June 2019 consid. 4). Apart from cases of abuse of rights, the question of performance or impossibility of performance forms part of the merits of the action. If applicable, this application must therefore be dismissed on the merits and not refused to be admitted (Zingg, loc. cit., Art. 59 CPC no. 47; Zürcher, loc. cit., Art. 59 CPC no. 13; Haas/Marghitola, Fachhandbuch Zivilprozessrecht, 2020, para. 10.1-10.2).

The practical interest requirement is intended to ensure that the court decides specific and not merely theoretical issues and thus serves to promote procedural economy (see, by analogy, judgment of the Federal Supreme Court 5P.400/2005 of 21 November 2005 consid. 3 with further references). The function of the legitimate interest in the proceedings is that the parties should not burden the State with unnecessary litigation (see judgment of the Federal Supreme Court 4A_489/2024 of 25 November 2024 consid. 1.1.2).

4.5 In the case of actions for performance and actions to change a legal relationship, the legitimate interest in the proceedings is generally manifest. This is because the claimant is seeking to enforce a claim or change a legal situation (Zingg, loc. cit., Art. 59 CPC no. 39). In the case of actions for performance, the legitimate interest is thus concomitant with the assertion of the right to performance (see Gehri, loc. cit., Art. 59 CPC no. 8). By filing an action for performance, the claimant demands that the defendant be ordered to do, refrain from doing or tolerate a particular act (Art. 84(1) CPC).

4.6 In the case of an action for injunctive relief, the legitimate interest in the proceedings is particularly important since – unlike in the case of an action for performance – the question arises under which conditions a threat of future infringement can be assumed based on the defendant's conduct

(Dorschner/Bell, Basler Kommentar, 4th ed. 2024, Art. 84 CPC no. 10). The purpose of injunction action as a negative action for performance is to prevent infringements by the defendant. In the case of actions for injunctive relief, it is therefore necessary to examine whether there is sufficient probability that the defendant intends to carry out the infringement in the near future. Their current conduct must give rise to serious fears of future harm. Herein lies the particularly legitimate interest in the action for injunctive relief. Statutory or contractual claims may form the basis for actions for injunctive relief (Dorschner/Bell, loc. cit., Art. 84 CPC no. 17-18; Zingg, loc. cit., Art. 59 CPC 40; Oberhammer/Weber, in: Oberhammer/Domej/Haas [ed.], Kurzkommentar zur Schweizerischen Zivilprozessordnung, 3rd ed. 2021, Art. 84 CPC no. 10; BGE 124 III 72 consid. 2 and 116 II 357 consid. 1). A request for an injunction within the meaning of Art. 28a(1)(1) SCC may be granted only if a sufficient legitimate interest in the proceedings exists on the part of the claimant. This is the case if there is an imminent threat of the unlawful act against which the request is directed, i.e. if the defendant's conduct gives rise to serious fears of a future infringement of the individual's personality rights and that infringement is associated with a certain degree of immediacy (Zürcher, loc. cit., Art. 59 no. 13; Rüetschi, "Rechtsschutzinteresse", sic! 2009 pp. 888 et seq.; judgment of the Federal Supreme Court 5A_228/2009 of 8 July 2009 consid. 4.1).

When proving the risk of a future infringement, a distinction is drawn between the risk of initial infringement and the risk of reoffending. If no infringement of the law has yet taken place (risk of initial infringement), the claimant must prove that there are specific indications that the third party intends to commit an infringing act. On the other hand, if an infringement of the law has already occurred and it is necessary to prove a risk of reoffending, the courts are more generous in finding a sufficient legitimate interest in the proceedings. In such a case, the claimant must prove two things: on the one hand, evidence must be provided that a similar infringement of the law has already occurred in the past, and on the other hand, the claimant must demonstrate that there is a risk that this infringement will be repeated. This must be assumed in particular if the defendant disputes the unlawfulness of the conduct being objected to, since it is then to be presumed that the defendant will continue that conduct in reliance on its legality. It must, however, be noted in this context that the claimant may not strictly be required to prove that such an infringement will actually occur. It is always only a hypothesis concerning future conduct, which by its nature is fraught with considerable uncertainty; for this reason, according to case law, the process of proving a legitimate interest in the proceedings should be facilitated. There must only be a refusal to admit the action if no specific indication of a serious risk is alleged; in all other cases the action must be admitted and, if applicable, dismissed for lack of serious risk and thus lack of a right to injunctive relief (see Oberhammer/ Weber, loc. cit., Art. 84 CPC no. 10; Dorschner/Bell, loc. cit., Art. 84 CPC no. 19; Rüetschi, loc. cit., pp. 888 et seq.; judgment of the Federal Supreme Court 4A_109/2011 and 4A_111/2011 of 21 July 2022 consid. 6.2.1; judgment of the Supreme Court of the Canton of Zug of 29 October 2012 consid. 2, in: GVP 2012 pp. 179 et seq.).

4.6.1 The serious fear of a future infringement of the law, as a fact of dual relevance, is a precondition for the admissibility of the case and a prerequisite for its substantive merits (see Haas/Marghitola, loc. cit., para. 10.13). The legitimate interest in the proceedings fulfils the necessary

filter function between an absolute right existing against everyone and the remedy of an action for injunctive relief. Not infrequently, there will be a not inconsiderable overlap here between the facts alleged in order to prove the legitimate interest in bringing proceedings and those alleged in order to establish the merits of the action itself, such that, based on the doctrine of facts of dual relevance, an examination of the content of the allegations, including any admission of evidence, is only carried out at the merits stage (see Oberhammer/Weber, loc. cit., Art. 84 CPC no. 9). This is in line with the prevailing view that facts of dual relevance should be examined only when assessing the merits of the action and not when determining its admissibility. When assessing admissibility, the court must therefore assume that facts of dual relevance, if conclusively asserted, are true (see consid. 2.3). For the admissibility of an action for injunctive relief, it must therefore also suffice if specific evidence that gives rise to a serious fear of an infringement is conclusively asserted, unless the claimant's assertions in this regard are manifestly spurious or constitute another form of abuse of rights (see Haas/Marghitola, loc. cit., para. 10.13).

4.6.2 In this respect, the imminent risk of reoffending or committing a breach is a prerequisite for the entitlement to injunctive relief and is therefore not a question of legitimate interest in the proceedings. Accordingly, if there is no imminent risk, the action must be admitted but dismissed as unfounded (see Bopp, in: Sutter-Somm/Lötscher/Leuenberger/Seiler [ed.], Kommentar zur Schweizerischen Zivilprozessordnung, 4th ed. 2025, Art. 84 CPC no. 9). Since the proximity of the threat is both a prerequisite for the admissibility and for the merits of the action, i.e. it is a fact of dual relevance, it is sufficient to examine whether the interest is current at the merits stage as well. Given the immediacy of the threat, the interest is also current (Zingg, loc. cit., Art. 59 CPC no. 45). As a procedural prerequisite, the legitimate interest in the action for injunctive relief must still be present at the time the judgment is handed down (judgment of the Federal Supreme Court 4A_570/2022 of 16 May 2023 consid. 2.1).

5. The Claimants start by arguing that the coal, oil, natural gas and cement industries generally cause particularly high emissions. Around 70% of global industrial CO_2 emissions since 1751 are attributable to the activities of 108 companies. The Defendant is one of the so-called “carbon majors”. The Defendant is the world’s largest cement manufacturer and is responsible for around 8% of annual CO_2 emissions, with greenhouse gas emissions rising as production increases. The Defendant caused around 7.15 billion tonnes of CO_2 emissions from 1950 to 2021, corresponding to 0.48% of global emissions. Calculated on the basis of total global emissions since 1751, the Defendant's share amounts to 0.42%, which means that it has emitted more than twice as much as Switzerland has emitted since 1750. It caused a rise in sea levels of 0.02 mm, corresponding to 0.01% of the global rise in sea levels. Accordingly, the Defendant is alleged to have contributed significantly to climate change and the resulting climate-related harm (file 1 para. 141–151). It is practically certain that global mean sea levels will continue to rise over the course of the 21st century due to greenhouse gases already in the atmosphere, which have accumulated since 1750. However, the extent of the increase depends on the emissions emitted today and in the future. Under a scenario consistent with the objective of limiting the increase in temperature to 1.5 °C, global mean

sea levels are likely to rise by 0.28-0.55 metres by 2100 compared to 1995-2014, and by 0.37-0.86 metres by 2150. Sea levels will inevitably rise for centuries to millennia due to the continued warming of the deep sea and the melting of the ice sheets. Changes to the ocean over the same period are irreversible. Reducing emissions could mitigate rises in sea levels and thus the occurrence of extreme water levels, which in turn would reduce the frequency and intensity of flood events. Since extreme water levels would normally rise by the same amount as sea levels, it is crucial that all emitters stop their excessive greenhouse gas emissions, which are incompatible with limiting global warming to 1.5°C. This is the only way to significantly mitigate the consequences associated with the rise in sea levels for the low-lying island of Pari (file 1 para. 195–209).

The Defendant is contributing to climate change through excessive greenhouse gas emissions across the group and is pursuing an inadequate climate strategy for the entire group until 2050. In doing so, the Defendant is infringing the Claimants' personality rights. Since the effects of climate change are not mere inconveniences that must be tolerated as part of normal life but rather an impairment of existential importance, the legitimate interest in the proceedings of the Claimants is to be classified as particularly weighty. Under the prayer for relief points 1.1-1.2, it is requested that the future cessation of excessive emissions be ordered in order to prevent current and future infringements of personality rights. Based on the Defendant's previous conduct, such infringements are not only to be feared as a serious likelihood, but to be expected with certainty, as they had already occurred in the past and HEKS' demands had not been taken into account.

In actions for injunctive relief, only the existence of a risk of reoffending must be shown to establish a legitimate interest in the proceedings. This follows from the particular nature of personality rights, which are inseparable from the person of the legal entity. Consequently, in the event of an infringement of these rights, there is from the outset a personal, practical and current interest in their protection. This interest arises already from the specific risk of repeated unlawful infringements of personality rights. With regard to points 2-5 of the prayers for relief relating to the payment of money, there is no need for a separate examination of the legitimate interest in the proceedings, since a court judgment is necessary for the enforcement of that claim. The fact that the Defendant is being asked to pay only part of the actual costs for the damage and the adjustment measures does not impair the Claimants' legitimate interest in the proceedings. They are also free to sue other "carbon majors". In the case of joint and several debtors, only a portion of the sum can be claimed from each debtor. In addition, the insignificance of the claims brought does not obviate the legitimate interest in the proceedings (file 1 para. 33–39; file 26 para. 43-47, 119–130 and 136).

5.1 The Claimants' legitimate interest in the proceedings is also personal, practical and current. Climate change poses an existential threat to small islands and low-lying coastlines such as the island of Pari in Indonesia. It affects the livelihoods, health, well-being, food security, access to drinking water and cultural values of the islanders. Rises in sea levels damage settlements and destroy coastal infrastructure, leading to the loss of economic assets and biodiversity in traditional agroecosystems, as well as the decline of fisheries and

tourism. The increasingly uninhabitable nature of the island is forcing the inhabitants to leave their homeland. Scientific studies confirm what those affected are experiencing first-hand. According to the Intergovernmental Panel on Climate Change (IPCC), the mean global sea level rose by 20 centimetres between 1901 and 2018. In the Pari region, sea levels rise at around 4.4 mm per year, more quickly than the global average. This affects the frequency, severity and duration of coastal flooding and leads to increased beach erosion and the retreat of the coastline. The island of Pari is considered a high-risk area due to its low altitude above sea level. Particularly severe flooding had occurred in November and December 2021, and further floods had occurred in May and June 2022 (file 1 para. 56–65 and 68).

5.1.1 Specifically, the Claimants were personally affected by this as follows:

- The economic existence of Claimant 1 was significantly impaired by the floods in December 2021. Around 60% of her fish stocks were destroyed by oil and other pollution washed ashore. In addition, for safety reasons, tourists avoided visiting the island for around two months, resulting in significant losses in her main sources of income of tourism and fishing. Property damage has been caused to the farms and the local ecosystem that regulates flooding has been damaged – both in the water and on land. Increasing soil salinisation is affecting the local food supply. This had a negative impact on her physical and psychological integrity, as well as her private and family life, such that decent living and working are becoming increasingly difficult (file 1 para. 71-83).

- The physical integrity of Claimant 2 and his family was also threatened by the floods. The floods caused pollution to the house and groundwater, requiring days of clean-up work and affecting the family's hygiene, well-being and quality of life. In addition, his tools were also affected, so that as a mechanic he was unable to work for several days and suffered a loss of income. Without work, his family's food security is at risk. The flood-related damage to property caused costs to be incurred in obtaining clean drinking water and making the necessary repairs to his house, resulting in a financial disadvantage (file 1 para. 84–93).

- The death of fish caused by flooding and the destruction of work equipment such as boats and tools also endangered the economic existence of Claimant 3. As a result of the days of clean-up work after the floods, he suffered a loss of income from fishing, which jeopardised his livelihood and that of his family. In addition, his fishing boat was washed away and damaged, which led to considerable repair costs (file 1 para. 99–113).

- Claimant 4, who works in the tourism sector, also suffered financial losses, inter alia as a result of the decline in overnight stays by guests and the cancellation of snorkelling trips. In addition, he was unable to go fishing for days due to the clean-up work,

which led to a loss of income. As a result, the very financial existence of his family was also threatened (file 1 para. 114–124).

They have all already suffered significant material and non-material damage. A scenario in which they would be more directly personally affected is hard to imagine. Their personal interest is also not altered by the fact that, in addition to the Defendant, other “carbon majors” are responsible for global warming and would be jointly and severally liable. Due to ongoing climate change, similar and more severe impairments, property damage and loss of income are to be expected in the future as well. The economic, environmental and social consequences of climate change are set to increase and there is a risk that a large part of the island of Pari will be flooded during their lifetime. Protecting the island requires costly coastal protection measures. Groundwater will have to be treated in future by filtration systems, due to increasing salinisation. In order to minimise future damage, it is necessary to raise their houses higher and install water filtration systems. The members of the community live and work collectively. The island of Pari will no longer provide a decent livelihood if it sinks so far into the sea that there is too little land available for cultivation, freshwater reserves become salinized and beaches erode to such an extent that local tourism collapses. As a result, the cultural, social, political and economic community on Pari is threatened and the island community is being forced to leave Pari. The rising floods are threatening the physical, economic and cultural livelihoods of all the Claimants. Climate change is therefore repeatedly affecting the Claimants' personality rights.

Personal interest does not require exclusive or sole interests. Access to justice may not be refused solely because there is also a public interest in the action or third parties could benefit from it. Otherwise, it would be possible to circumvent civil liability by infringing the rights of others to a sufficiently large extent. The number of persons affected by an infringement of the law is therefore not an appropriate criterion for distinguishing this action from collective actions. The characteristic of collective actions is precisely the absence of an individual interest. It cannot be concluded that there is an inadmissible collective action on the basis of a parallel impact on public interests. In addition to affecting individual interests, many actions also affect public interests. In the present case, a legitimate interest exists, since global warming is associated with local consequences for the Claimants. Their personal interest is not obviated solely because others could also be affected. Refraining from emitting greenhouse gases can never be for the exclusive benefit of a specific person. In addition, compared to those of the general public, their livelihoods are directly and existentially threatened and are particularly fragile. The way in which they are affected by the consequences of climate change differs considerably from that of the general public. Even if climate change poses a serious threat to some 3.3 to 3.6 billion people, this does not mean that everyone is particularly affected in the same way. Because the Claimants are concerned directly, this is not a question of an abstract examination of the consequences of global warming. Nor is it sought that an abstract question of law be adjudicated without reference to their own interest. Finally, the present case is not a matter of safeguarding third-party interests because the action is supported by various NGOs (file 26 para. 137-156 and 162-168).

5.1.2 The Claimants further state that their practical interest is for their situation to improve because the CO_2 emissions of the Defendant and other “carbon majors” are effectively limited in accordance with the goal of limiting global warming to 1.5°C. Reducing CO_2 emissions would mitigate the impact on their personality right, as can be proven by clear scientific facts. With sufficient resources for coastal protection measures, the island of Pari will remain at least partly habitable for the next few centuries, which would be almost unimaginable without a reduction in greenhouse gas emissions. In this regard, every tonne of CO_2 not emitted by Defendant would slow down rises in sea levels. The Defendant is in a position to set and implement its group-wide climate strategy to bring it into line with the 1.5°C limit. It can also reduce its emissions decisively in the short and medium term. It is responsible for taking appropriate measures to this end, such as reducing the amount of clinker in cement or replacing cement with limestone or calcined clays. The severity of the infringement of personality rights thus depends on the Defendant's future conduct. The benefit of the action cannot be denied merely because damage has already been irreversibly caused. In addition, all players in the cement and concrete industry are obliged to contribute to limiting the temperature rise to 1.5°C. It is therefore also not correct that, in the event that the action is upheld, greenhouse gas emissions will be shifted to other groups within the sector, as these players would also have to make efforts to reduce emissions. Finally, no practical effect beyond the enforcement of the asserted right can be claimed (file 1 para. 192-194; file 26 para. 52–63).

The utility of the action is also not altered by the fact that, in addition to the Defendant, other “carbon majors” also cause greenhouse gas emissions. There is no obligation to bring legal action against all participants or those who are jointly and severally liable. The so-called “drop in the ocean” argument has already been rejected by other courts. The collaboration of multiple harmful parties does not result in the Defendant's liability being excluded. Even the Defendant is assuming that having the claim upheld would be of benefit to it. A court can review whether the “carbon majors” are complying with the 1.5°C limit (file 1 para. 297–302; file 26 para. 173–175; file 56 para. 107).

5.1.3 Since the Defendant emits greenhouse gases on a group-wide basis every day, the Claimants' personality rights are directly under threat. Thus, their interest is also current. Under the Paris Agreement, efforts must be made to limit the increase in temperature to 1.5°C so that the risks and impacts of climate change can be significantly reduced. In order to have a likelihood of over 50% of reaching this target, global greenhouse gas emissions must be reduced by an average of 43% compared to 2019 levels by 2030, 69% by 2040 and 84% by 2050. In terms of net global CO_2 emissions, a reduction of 48% by 2030 and 80% by 2040 compared to 2019 levels will have to be achieved. This requires limiting the CO_2 budget, with a maximum of 500 gigatonnes of CO_2 being allowed to be emitted worldwide. This budget is quickly used up. Thus, the Defendant alone caused around 7.15 gigatonnes of CO_2 between 1950 and 2019. It is not possible for the contracting States to the Paris Agreement to accomplish this task without the involvement of non-State actors such as the Defendant.

By participating in the “race to zero campaign” under the aegis of the UN, the Defendant has declared its intention to achieve net zero CO_2 emissions by 2050. The Defendant's promise includes making maximum efforts to contribute a fair share to reducing global CO_2 emissions by 50% by 2030. Even if a steeper reduction path applies to CO_2 than to greenhouse gases as a whole, the global reduction path for greenhouse gases is material. Reference is also made to the scientific reports of the IPCC, which have also been recognised by the Federal Supreme Court and are relevant for the application of the law. Compliance with this reduction path, which is based on the best available scientific evidence, requires immediate action. A rapid reduction of CO_2 by the Defendant is therefore essential in order not to exceed the remaining CO_2 budget and to comply with the reduction paths. The reduction path sought in the action must be implemented immediately. It was not about behaving impeccably at some point in the future, which is why the Defendant cannot be granted a transitional period. A step-by-step reduction of 43% by 2030 and 69% by 2040 will make it impossible to comply with the reduction path. Rather, greenhouse gases should be reduced annually in order to lower the percentages compared to 2019 referred to in point 1 of the Claimants’ prayer for relief. It is therefore not a question of cease-and-desist obligations that would take decades to come into effect, but rather of obligations with which Defendant must comply immediately and permanently by beginning to reduce emissions today. The Defendant acknowledges that there is a personal, practical and current interest in stopping emissions immediately. However, there is also a legitimate interest if, instead of an immediate halt to greenhouse gas emissions, a less drastic reduction is demanded (file 1 para. 155–167; file 26 para. 64-76).

5.1.4 In order to protect the island, mangroves and coastal wetlands must be restored. This binds carbon, reduces coastal erosion and increases protection against storm surges. In order to protect trees and beaches from erosion, breakwater systems also need to be installed near the beach. The requested adaptation measures will make it possible to mitigate the effects of man-made climate change on the Claimants’ personality rights. Without these measures, the island of Pari will become permanently flooded and uninhabitable. The protective measures mentioned can delay this process. Accordingly, there is a legitimate interest in the financial prayers for relief as well (file 1, para. 210-217; file 26 para. 48–51).

5.2 The Defendant disputes the legitimate interest in the proceedings of the Claimants on the grounds that it is not sufficiently personal, not practical and not current (file 18 para. 7-10, 12-13 and 124-128).

5.2.1 Mitigating climate change and its impacts is one of the greatest challenges of the present day. The Defendant argues that the Claimants consider the regulatory framework developed by the international community to mitigate climate-related impacts to be inadequate, which is why they are seeking to make up for the insufficiency of the political situation by taking legal action. HEKS, which mainly serves public interests, is the driving force behind this activist effort and is acting via the persons of the Claimants. Climate change, however, affects not only the Claimants but the whole of humanity. According to the IPCC reports, individual persons or groups of persons cannot be considered in isolation. Between 3.3 and 3.6 billion people are estimated to be particularly at risk from the effects of climate change.

In particular, regions with significant development constraints are vulnerable to climate hazards. Almost half of humanity is affected in the same way as the Claimants and suffers from water shortages. With global warming of 1.5°C, more than 350 million people will be exposed to the risk of heat death by 2050, and up to 139 million people will be affected by rising sea levels. The Claimants are not particularly threatened in a manner that would grant them a personal interest. The Claimants themselves concede this outside the proceedings. Climate change will have a global impact even if global warming is limited to 1.5°C. Although, in their view, the Claimants are more exposed to climate change than many others, they still belong to a group estimated in the millions of people. The interests here are thus general interests, since other inhabitants of small islands and low-lying coasts are equally affected by climate change. Since the parties are interchangeable at will, this is an inadmissible collective action that civil proceedings were not designed to hear. Anyone could bring an action against anyone else, with the result that the Claimants' personal interest is no longer recognisable as such. If the Claimants' personal interest is affirmed, it would also have to be recognised for millions of other people. This renders the legitimate interest in the proceedings meaningless. Moreover, the specific impact has to be defined more narrowly in civil proceedings than in public law, the principles of which should be used in the alternative. Since a sufficient degree of personal concern is assumed only cautiously in the context of public law, caution is all the more necessary in the context of private law. This is particularly relevant because decisions in civil law can also have a prejudicial effect on other private individuals (file 18 para. 129–166; file 36 para. 153–163 and 200).

5.2.2 The Defendant further argues that there is also no sufficient practical interest in the action. A judicial assessment of the Defendant's climate strategy is required, which includes the abstract legal question as to whether a company's climate strategy can be reviewed in court proceedings. It is not permissible to assess abstract legal issues in the area of the protection of personality rights. In addition, the rises in sea levels cannot be halted even if the action is upheld, as the Defendant’s share of greenhouse gas emissions is marginal, accounting for 0.42% of global emissions from fossil fuels and cement and resulting in a rise in sea levels of 0.02 mm (= 0.01% of global rises in sea levels). Reducing its emissions would not prevent the imminent sinking of the island of Pari, since the rise in sea levels is irreversible over centuries to millennia due to the greenhouse gases already in the atmosphere. This is also the assumption of the IPCC. Due to the continued demand for cement and concrete, greenhouse gas emissions from other suppliers would then increase. The sinking of the island of Pari is inevitable.

The Defendant is also already playing a pioneering role in terms of innovation and sustainability. For example, it has signed the “Business Ambition for 1.5°C” initiative of the United Nations Global Compact, with interim targets for 2030 that have been recognised as being consistent with a net zero path. In addition, it has invested millions of Swiss francs in projects and technologies to reduce CO_2 since 2022. If the action is upheld, less funds will be available for such projects for innovative developments, which will be detrimental to climate protection. Climate protection requires a holistic and

coordinated approach at a global level, involving the industry as a whole as well as private stakeholders and States. Decisions directed against individual stakeholders are practically useless. The fact that isolated measures are useless has been scientifically proven. As the action seeks to achieve a singular reduction in CO_2 emissions, the practical interest is not sufficient. The Defendant's conduct sought by the action would only have a positive effect on the factual or legal situation of the Claimants, if it had an effect at all, combined with broad and difficult to predict changes in the conduct of third parties. The Claimants are thus concerned only with the remote possibility that the outcome of the proceedings might one day still play a role somewhere. The objective of the legal protection sought is therefore without substance.

Furthermore, it is not clear how mangrove forests can be planted and breakwater installations erected so as to prevent the sinking of the island of Pari with the monetary compensation claimed, which amounts to the equivalent CHF 10,440.00. This would require costly protective measures to say the least. Since only a marginal percentage of the costs is being sought from the Defendant in this regard, the claim is of no use even if it is fully upheld, which means that there is no legitimate interest in the proceedings in this regard either. Here, too, comprehensive access to the necessary financial resources is required. Furthermore, according to the IPCC, the effectiveness of measures such as planting mangroves and building breakwater systems has not been sufficiently established and such measures may even be detrimental. The ability to adapt to climate change has already been exceeded many times in small island developing States, which is why it can be assumed that the island of Pari will become uninhabitable regardless of the greenhouse gas reductions requested. Nevertheless, the World Bank has been supporting the Indonesian government's national mangrove rehabilitation programme since 2022 (file 18 para. 167–192 and 198-204; file 36 para. 164–177).

5.2.3 Without any practical benefit, there is also no sufficient current interest in the action. The action is not asking for an immediate change in behaviour on the Defendant’s part, but for a staggered reduction in greenhouse gas emissions. The demand for a gradual reduction until 2040 asserts a personality right well into the future. Emissions are either excessive or not, and are measured now and not in the future. Therefore, the immediacy of the imminent infringement of the law, which is necessary for actions for injunctive relief, is lacking. In addition, the Defendant is not alleging any infringement of the law in the event of global warming of up to 1.5°C, and thus acknowledges that there is no current interest. Allowing such actions would mean allowing rights and obligations to be judged for years into the future, which is unlawful (file 18 para. 193–197; file 36 para. 178–184).

5.2.4 In addition, the Claimants are not primarily concerned with obtaining financial compensation for the harm suffered and future harm. The prayers for relief points 2-5 are merely symbolic in nature, which is apparent from the fact that the monetary claims total only CHF 14,706.52. This calculation is furthermore arbitrary, as the Defendant's CO_2 emissions are not an appropriate objective basis for calculating the damage suffered. The same applies to the global emissions from fossil fuels and cement on which the Claimants are relying. The claim for damages serves only to enforce the main claim, namely to reduce CO_2 emissions. There is no sufficient legitimate interest in this, as

the action is politically motivated and furthermore constitutes an abuse of rights (file 18 para. 205–210; file 36 para. 185–189).

5.3 It has already been stated that the immediacy of the imminent infringement of personality rights is a fact of dual relevance. Under the premise that the Claimants have already suffered an infringement of their personality rights as a result of the Defendant's greenhouse gas emissions to date, the legitimate interest in the proceedings depends on whether the Defendant intends to continue to emit greenhouse gases (see consid. 4.6–4.6.1). It is therefore necessary to examine whether the Claimants' contentions in relation to the legitimate interest in the proceedings are conclusive and coherent and whether the Defendant's submissions are capable of invalidating those contentions.

5.3.1 The court will first consider the legitimate interest in the application for injunctive relief. In this regard, the risk of reoffending is first examined (consid. 5.3.2), followed by an analysis of the Claimants' personal (consid. 5.4 et seq.), practical (consid. 5.6 et seq.) and current interests (consid. 5.8). Finally, the court will consider the existence of a legitimate interest in the requests for performance (consid. 5.9). To the extent that scientific data must be used to answer these questions, reference is made to data from the Intergovernmental Panel on Climate Change (IPCC). Its reports are based on a comprehensive and rigorous methodology and provide scientific guidance on regional and global climate change, the impacts and future threats of climate change, and options for adaptation and mitigation (see ECHR judgment no. 53600/20 of 9 April 2024 [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland] § 429). Both parties rely on these reports (see file 1 para. 58; file 36 para. 154). In addition, the reports have also served the Federal Supreme Court in the past as an authoritative scientific basis (see BGE 146 I 145 consid. 5.3).

5.3.2 Art. 2(1)(a) of the Paris Agreement stipulates that temperature increases must be limited to 1.5°C above pre-industrial levels. According to data from the Intergovernmental Panel on Climate Change (IPCC), total greenhouse gas emissions must be reduced by an average of 43% below 2019 levels by 2030, by 69% by 2040 and by 84% by 2050, and net global CO_2 emissions must be reduced by 48% compared to 2019 by 2030 and by 80% by 2040 in order to have a greater than 50% likelihood of limiting global warming to 1.5°C (file 1/82 C.1.2). The Claimants argue that the Defendant intends to reduce its emissions by only around 25% by 2030, which means that it would not reduce its CO_2 emissions by the necessary extent (file 1/14 para. 8; file 18/42 pp. 16–17). The Defendant alleges that its CO_2 targets are consistent with a scenario in which global warming is limited to 1.5°C (file 26 para. 181-185). The Defendant's 2023 climate report, on the other hand, shows that it intends to reduce its emissions to a lesser extent by 2030 (see file 18/42 p. 17). It further disputes the CO_2 reduction requested by the Claimants and thus the unlawfulness of the conduct objected to – which is to be regarded as a given in the context of the theory of dual relevance – and intends to continue to emit greenhouse gases within the scope of its CO_2 targets (file 1/14 para. 8, 11 and 12). Thus, renewed infringements of the law must not only be feared as a risk, but must be regarded as a certainty. Moreover, it remains undisputed by the Defendant that the latter will continue to emit CO_2 as a result of its activities.

5.4 Furthermore, it is undisputed that climate change has effects on the world's population (file 36 para. 158). According to the IPCC, it affects, among other things, the availability of water, food and food security, and human health (file 36/99 pp. 213 et seq. and 238 et seq.; file 36 para. 158). The IPCC's estimate that around 350 million people will be exposed to the risk of heat death, up to 139 million people will be affected by rising sea levels and around half of the world's population will suffer from water shortages by 2050 is also undisputed (file 36 para. 161; file 36/99 pp. 231 and 234 and 242 and 36/94 p. 6). The Claimants have conclusively stated in detail the extent to which they have been harmed by climate-related effects (see consid. 5.1.1). The flooding of the island of Pari and the Claimants' houses in November and December 2021 is documented by video recordings (file 1 para. 66; file 1/41). The damage caused by the flooding is also identifiable. According to their own statements, the Claimants rely on a water filtration system because the floods have contaminated and salinized the groundwater. In addition, water shortages have already had financial consequences for the Claimants because they have had to buy water. Moreover, fishing and tourism are suffering. There is a lack of income in these areas, which is placing an additional financial burden on the Claimants (see consid. 5.1.1). If the Claimant's assertions are correct, they are being personally affected in many respects by the climatic effects of global warming. Thus, there is a personal interest both with regard to the request for injunctive relief pursuant to Art. 28a SCC as well as with regard to the claims for damages and compensation for pain and suffering for which the Claimants rely on Art. 41, 49 and 55 SCO.

5.5 The next issue to examine is whether the Defendant’s objections can invalidate the Claimants' conclusive argument in relation to their personal interest in their claim.

5.5.1 The Defendant argues that this is an inadmissible collective action because, alongside the Claimants, half the world's population is affected by climate change, and the action is thus in the public interest (see consid. 5.2.1).

5.5.2 Anyone who safeguards the interests of third parties, whether private or public, is in principle not worthy of protection, since everyone is obliged to safeguard their own interests and is limited to safeguarding their own interests. If a person’s own interests are at stake and the interests of others are affected to a greater or lesser extent, it is necessary to weigh up whether the self-interest carries sufficient weight to justify conducting the case (see Zingg, loc. cit., Art. 59 CPC no. 43).

5.5.3 According to the IPCC, around 3.3 to 3.6 billion people are acutely threatened by climate change (file 36/94 para. A.2.2). It therefore actually cannot be ruled out that the action may also encompass third-party interests. However, the personal impact on the Claimants goes beyond that of the general impact on persons who have not (yet) suffered any damage as a result of a specific incident or who are exposed to an increased risk. For the Claimants, these are no longer potential dangers or risks of climate change that could materialise at some point in the future, but rather the consequences of climate change that have actually occurred. Rising sea levels, increasing floods and erosion are causing great concern to the Claimants and are already

harming their well-being and quality of life. The dwindling fish stocks and the lack of tourism are already causing economic losses, which means that the Claimants' livelihood has already been infringed. Due to the specific circumstances on the island of Pari and the adverse effects of rises in sea levels on their livelihoods and well-being, the Claimants claim to be particularly affected by climate change. According to the Claimants' statements, there is a risk that the harm and damage on the island of Pari will continue to increase unless appropriate measures are taken. Assuming that the Claimant's statements are true, the Claimants are considered particularly vulnerable, as their livelihoods are directly and existentially affected by climate change and they are not considered merely as “potential” victims (see file 40/2 para. 485–486). Even if the action concerns the interests of third parties, for example because those parties advocate a reduction of greenhouse gases in principle or because they are affected to a similar extent as the Claimants, the Claimants’ self-interest carries sufficient weight in the present case to justify litigation. This action affects their own legal status.

5.5.4 In this respect, the extent to which the Claimants are affected also differs from that in “KlimaSeniorinnen”. The Federal Supreme Court dismissed the appeal in the latter case due to the lack of a personal interest. It stated that the petition to have an order issued concerning real acts did not serve the individual legal protection of the appellants, but rather was aimed at reviewing existing climate protection measures for their compatibility with the State protection obligations derived from the rights invoked, and indirectly aimed at tightening those measures (BGE 146 I 145 consid. 5.5). As the ECHR then held, the available documents did not indicate that the “KlimaSeniorinnen” had been exposed to the adverse effects of climate change to an extent, or could be exposed at any given time in the future, that would give rise to an urgent need to ensure their individual protection. Although they had pointed out the health difficulties that had affected them in the event of heat waves, including the effects on their existing illnesses, it could not be said that they were suffering from a critical illness, the potential exacerbation of which by heat waves could not be mitigated by the adaptation measures available in the country or by reasonable personal adaptation measures in view of the scale of heat waves in Switzerland. It should be noted that the character of being a victim in relation to a future risk was recognised only exceptionally, and that the “KlimaSeniorinnen” had not proven that such extraordinary circumstances existed in their case (see file 40/2 para. 532-533). While the particular impact of climate change on the “KlimaSeniorinnen” was denied on the basis of the adaptation measures personally available to them and their need for protection in relation to future threats was not established, the Claimants have no way of stopping rises in sea levels by taking reasonable personal adaptation measures. Since, according to their statements, the risk of climate-related damage has already materialised, the Claimants’ need for protection is thus of a different degree of urgency than that of the “KlimaSeniorinnen”. Based on their conclusive arguments, the Claimants are particularly affected by the effects of climate change and, in the absence of any reasonable personal defensive measures available to them, will have to expect similar or even more devastating floods in the future, as extreme water levels are set to rise even further as a result of rises in sea levels,

according to the Claimants' submissions, which will lead to more frequent higher water levels.

In this respect, the present action also differs from the actions brought in Germany against BMW and Mercedes-Benz AG. The claimants in those cases did not assert that any harm had already been suffered or imminent, but merely that it was to be expected in the future (see Habersack, Klimaschützende Unterlassungsklagen gegen Pkw-Hersteller vor dem BGH, ZIP 27/2024 = file 36/68 pp. 1 et seq.). The same applies to Federal Supreme Court decision 147 IV 297, cited by the Defendant. The Federal Supreme Court stated in consideration para. 5 that no individual legal interest was protected with the intention of averting dangers (see Pra 2021 no. 133). In the aforementioned case, therefore, no actual infringements of the legal interests were being complained of; instead, merely possible risks of infringing those legal interests were being argued.

5.5.5 Contrary to the Defendant's position, this is not an – undisputedly – inadmissible collective action under these circumstances. This would only have to be assumed if no (overriding) private interests existed (see BGE 101 II 177 consid. 4c). Due to the particular impact on the Claimants, the latter's interests are not relegated to the background compared to those of the conventional group of people highly vulnerable to climate change to the extent that it could be said that they are primarily pursuing public interests. In other words, the issue here is not the global effects of climate change on humanity, but its local, directly perceptible negative manifestations on the island of Pari for the Claimants directly affected by it. The direct harm to the Claimants caused by climate change is not eliminated by the fact that the rights of an indefinite number of other persons on the Island of Pari or on comparable islands may also be affected. In light of the above, the fact that private and public interests coexist does not mean that there is no need for legal protection due to the lack of a personal interest on the part of the Claimants.

The ECHR has handed down similar rulings in the past, i.e. that there was no collective appeal, even though third-party interests were affected in addition to self-interests, such as in case 30765/08 of 10 January 2012 concerning the waste crisis in the Campania region of Italy. The appellants denounced a situation affecting the entire population of Campania, namely the negative impact on the environment resulting from the inadequate running of the official waste management system.

5.5.6 It should also be noted that around 70% of CO_2 emissions are attributable to the activities of a group of around 90 companies worldwide, the so-called "carbon majors" (see Kieniger, Klimaklagen im internationalen und deutschen Privatrecht, ZHR 187 [2023] p. 352 et seq.; file 36/119). There are thus significant differences in the extents to which individual actors contribute to global warming. In theory, a threshold value can be defined for the liability of greenhouse gas emitters based on quantitative criteria for the pollutants released. The Environmental Protection Act (*Umweltschutzgesetz*, EPA) also provides for the setting of maximum immission values for limiting environmental pollution (see Art. 13 EPA). Furthermore, it cannot be ruled out that case law, when further developing the law based on scientific studies, may lead to delineation criteria

being defined (see consid. 3.7 et seq.) that enable the greenhouse gas emissions of a “carbon major” to be handled differently to the emissions of a small CO_2 emitter or an individual person over the course of his or her life. In this way, the group of potential defendants can be narrowed down. Therefore, climate liability under private law cannot be rejected from the outset because it could lead to “lawsuits against everyone”. The fossil fuel industry in the USA, in particular, was able to use this argument in the past to shirk responsibility for the climate catastrophe and blame it on the consumer (see Kieniger, loc. cit., p. 352 et seq.; file 36/119). The Defendant's argument alleging an inadmissible collective action therefore does not hold even in view of the different levels of contribution by polluters to greenhouse gases known today.

5.6 According to the IPCC, around 42% of global greenhouse gas emissions occurred between 1990 and 2019, at a time when man-made climate change and its dangers had been known for a long time. Despite international climate policy, the Paris Agreement and the promises made in the form of legislation on climate neutrality by 2050 (see Art. 3(1) CIA), greenhouse gas emissions have not yet reached their peak. Emissions are expected to continue to rise until 2050 (file 1/82 B.1.3; Kieninger, loc. cit., pp. 388 et seq.). As the IPCC points out, combating global climate change requires urgent international cooperation. Due to the size and complexity of this task, all governmental and economic forces are called upon to cooperate within the limits of their capabilities and powers. The decisions and actions taken today have effects that will be felt now and for thousands of years to come. Unless it is effectively combated, climate change will increasingly threaten ecosystems and biodiversity, as well as the livelihoods, health and well-being of present and future generations (file 36/94 p. 24). Accordingly, the benefits of reducing greenhouse gas emissions for combating climate change must be considered as a matter of principle. Otherwise, all existing politically legitimate climate protection measures aimed at reducing greenhouse gas emissions to the point of climate neutrality would be nonsensical.

Even if climate change is not irreversible over a certain period of time due to the greenhouse gases already emitted, the duration of this irreversibility is likely to increase with every CO_2 emission in excess of the climate-neutral quantity, and climate change will continue to progress (see file 36/94 B.3). What is more, probabilities are used to achieve climate neutrality, which means that this is an uncertain target (see file 1/82 C.1). It is therefore possible that climate neutrality will not be achieved in spite of existing efforts and that the date of climate neutrality will be postponed even further. This is all the more likely given that previous international efforts and agreements on their own apparently have not (yet) achieved the desired success and that the climate targets have had to be adjusted over the years. This is also the case in Switzerland, when it transpired that its actions are falling short of the necessary targets and the climate legislation was revised in 2021. In view of the consequences of climate change, the long retention period of greenhouse gases in the atmosphere and the inevitability of further global warming and the associated damage (see file 1/33 p. 22), one cannot wait for an overall solution to be found at some point. In these circumstances, the

fundamental legitimacy in assessing the duty to cooperate and the liability of private actors cannot not denied for the purposes of the Claimants' prayer for injunctive relief.

5.7 It is to be examined below whether the Defendant's objections can invalidate the Claimants' practical interest in their prayer for injunctive relief.

5.7.1 The Defendant starts by claiming that its contribution to climate change is marginal. Sea levels will continue to rise even without its emissions, and the island of Pari can no longer be saved.

Climate change is a global phenomenon. The fact that a company is not solely responsible for climate change, and that the reduction of greenhouse gases by a single actor may not have an immediately perceptible effect on global climate consequences, does not, providing there is a corresponding obligation (something the Defendant itself assumes, otherwise it would hardly make any effort to achieve a net zero strategy) (file 18/42 p. 19), discharge the Defendant from its individual responsibility to contribute to the fight against climate change as far as possible. If the Defendant's line of argument were to be followed, national climate protection measures would also have to be denied their legitimacy, since no country can stop climate change on its own. Nevertheless, it is the responsibility of every contracting State to the Paris Agreement to contribute. Every single contribution is essential in tackling climate change. In this sense, the Defendant also acknowledges that a reduction in greenhouse gases would be of benefit to the Claimants if the whole world reduced greenhouse gases (file 18 para. 177). The practical interest in the prayer for injunctive relief lies in preventing an imminent infringement of personality rights. Whether the Defendant is actually bound to implement the requested reduction in CO_2 emissions will be clarified only in the context of the substantive examination. Consequently, the Defendant's assertion that the effects on sea levels of upholding the claim would be only marginal is also an issue that must be assessed in the context of the substantive examination and does not alter the practical benefit of the prayer for injunctive relief. Contrary to the Defendant's position, this is not a matter of clarifying an abstract question of law.

The fact that the Claimants are holding only the Defendant liable under the present action and are not also suing other legal persons does not alter the benefit of the action either. There is no legal obligation to sue all jointly and severally liable persons. Furthermore, the liability of a third party for the same set of facts cannot be invoked in order to mitigate one's own liability (BGE 109 II 304 consid. 5).

5.7.2 Furthermore, the Defendant's argument that other players in the concrete and cement industry would emit more greenhouse gases in the Defendant's place in the event of an obligation to reduce emissions is also unconvincing. If the action is upheld, other CO_2 emitters would probably also have to expect to be held accountable for their emissions. Such a court ruling could have a deterrent effect on other potentially liable persons. The threat of an injunction may cause other actors in the cement and concrete industry to reduce their emissions. Therefore, the assumption of a shift in greenhouse gas emissions from one actor to

another is purely speculative. Apart from that, harmful conduct is not legitimate just because others also behave in the same way.

In addition, there are options for reducing emissions from cement and concrete, for example by striving to achieve material efficiency or by replacing cement with ground limestone or calcined clays (file 1/73 para. 11.4.1.2 p. 87). In this respect, it is possible to reduce CO_2 in the concrete and cement industry at constant levels of demand, even if any reduction of greenhouse gases in this sector is limited until new processes are established and depends in particular on the substitution of cement-containing materials and the availability of carbon capture and storage (file 36/94 p. 105). In addition, the Defendant itself claims that it is following its own reduction path (file 18/42 pp. 16–17), which underlines the possibility of CO_2 emissions.

5.7.3 It is safe to assume that the factual or legal situation of the Claimants could be positively influenced by an outcome of the proceedings that is positive for them, which means that there is a practical interest in the Claimants' prayers for injunctive relief.

5.8 It is already clear that global emissions are excessive, as the already tangible effects of climate change demonstrate. It has already been mentioned that, under the Paris Agreement, the increase in the average global temperature must be kept well below 2°C above pre-industrial levels or that the temperature increase must be limited to 1.5°C above pre-industrial levels (Art. 2(1)(a) of the Paris Agreement). According to the IPCC, while not expected to exceed this level in the near future, global warming is projected to reach the 1.5°C threshold around 2040 (probably date range 2030-2052) if it continues at the current rate (see https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf A.1.1 p. 4; accessed 3 November 2025). Only if the concentration of greenhouse gases in the atmosphere falls again is it sufficiently likely that global warming can be limited to 1.5°C (see BBl 2022 1540 para. 2.2). According to the IPCC, immediate action is needed, with reduction paths that aim to achieve a net reduction in CO_2 emissions of 43% below 2019 levels by 2030 and 84% by 2050 offering the best chance globally to avert the most serious consequences of dangerous climate change (file 1/82 C.1–C.1.1, C.2–C.2.1 and C.3). Waiting to reduce CO_2 emissions would further delay the achievement of climate targets. In order for there to be a greater than 50% probability of meeting the limit on global warming to 1.5°C, a budget of around 500 gigatonnes of CO_2 remains (see file 1/82 B.1.3). This can only be achieved by means of immediate and drastic emission reductions. The Claimants' interest in the prayer for injunctive relief is thus urgent and current, even if the pursuit of climate neutrality is still a long way off.

5.9 In addition, the Claimants demand that the Defendant make a monetary contribution towards flood protection measures, such as building breakwater installations and planting mangroves on the island's coast, in order to mitigate the infringements of their personality rights (file 1 para. 210- 217; file 26 para. 31–42). Admittedly, the effectiveness of such adaptation measures, such as planting mangroves on the eroded coastline, is limited, as the IPCC has stated. Nevertheless, a positive effect is not entirely ruled out. The IPCC estimates

that ecological adaptability is low to moderate (file 36/92 pp. 381, 412 and 2077). Consequently, the adjustments proposed by the Claimants are not without benefit and, in the current situation, are urgently necessary to limit further harm. In order to enforce these claims, the Claimants are also reliant on a court judgment (see consid. 4.5). The same applies to the claims for damages and for compensation for pain and suffering to remedy the infringements of their personality rights (file 1 para. 218–225). Compensation for damage fulfils the traditional and important function of liability law (see Rey/Wildhaber, loc. cit., § 1 para. 11), to which reference is made in connection with compensation for infringements of personality rights (Art. 28a(3) SCC). For this reason, the Claimants also have a legitimate interest in proceedings concerning claims for financial contributions to flood protection measures and for damages and compensation for pain and suffering. This is also not altered by the fact that the amounts claimed are small. The insignificance of the asserted claim (minima non curat praetor) does not obviate the legitimate interest and does not constitute a negative procedural requirement (see Zingg, loc. cit., Art. 59 CPC no. 48). In addition, pursuant to Art. 86 CPC, only part of the action may be brought, which means that the legitimate interest in the proceedings exists even if the monetary claim asserted does not cover the costs of the protective measures.

5.10 Finally, it is also not clear how the Claimants could enforce the protection of their rights more quickly or easily in another manner, as they rightly assert (file 26 para. 154). Nor is it discernible that the Claimants, who wish to avert a threat to their existence, are asserting their own rights in a manner that is intended to harm the Defendant. Therefore, the Claimants cannot be accused of any abuse of rights. Moreover, whether an action is expedient is irrelevant in assessing the legitimate interest in proceedings (see consid. 4.1). It must therefore be concluded that there is a legitimate interest in proceedings with regard to all of the Claimants' prayers for relief.

6. A further procedural prerequisite is the specificity of the prayer for relief (see Art. 221(1)(b) CPC). In the prayer for relief, the claimant must state what it wants specifically, clearly and with certainty (see Art. 84(1) CPC; Willisegger, loc. cit., Art. 221 CPC nos. 12 and 18).

6.1 According to a general principle of law, a prayer for relief must be formulated in such a specific manner that it may be rendered as a judgment if the claim is upheld. The opposing party must know what to defend itself against (protection of the right to be heard), and it must be clear for the court what the subject of the dispute is, based on the principle of delimiting the scope of the case (Art. 58(1) CPC), from which the substantive legal force of the decision is also derived. The prayer for relief filed in relation to the judgment is also intended to enable enforcement, with the expectation that the dispute will not be continued in the enforcement proceedings. However, enforcement law has a supporting function as part of procedural law. The general thrust of the law of civil procedure is to leverage substantive law. The specificity requirements imposed therefore also depend on the particularities of the applicable substantive law. In the case of an action for positive performance for the restitution of an object or the performance of some other act, petitions for relief must be described with sufficient precision that they may serve as the text of the judgment and, without further clarification, as a basis for enforcement. This also applies to actions for performance aimed at an injunction. The acts the Defendant is to be prohibited from performing must be described as precisely and specifically as possible, because

they may not be reassessed during enforcement proceedings. The enforcement and criminal justice authorities must also know which actions they have to prevent or punish. Where unspecified prayers for relief are allowed at all, it is where it would be impossible or unreasonable for the Claimant to file a specific prayer for relief (Art. 85(1) CPC by analogy; BGE 144 III 257, consid. 4.4.1; judgment of the Federal Supreme Court 4A_686/2014 of 3 June 2015 consid. 4.3.1; judgment of the Commercial Court of Zurich HE130354 of 15 May 2014 consid. 3.4.2; Willisegger, loc. cit., Art. 221 CPC no. 18; Füllemann, in: Brunner/Gasser/Schwander [ed.], Schweizerische Zivilprozessordnung, 2nd ed. 2016, Art. 84 CPC no. 4; Killias, Berner Kommentar, loc. cit., Art. 221 CPC nos. 8 et seq.; Dorschner/Bell, loc. cit., Art. 84 CPC no. 12; Göksu, Handkommentar zum Schweizer Privatrecht, 3rd ed. 2016, Art. 679 SCC no. 11 in fine; each with references).

Ambiguous prayers for relief must be interpreted in accordance with their objective meaning and the principle of good faith pursuant to Art. 52 CPC. In this regard, the court may also rely on the statement of claim (BGE 137 III 617 consid. 6.2) and, in certain circumstances, seek clarification by exercising its judicial duty to question pursuant to Art. 56 CPC (Richers/Naegeli, in: Oberhammer/Domej/Haas [ed.], Kurzkommentar zur schweizerischen Zivilprozessordnung, 3rd ed. 2021, Art. 221 CPC no. 14a). If the claim for performance is still vague even when interpreted in good faith and after the right to question has been exercised, the action must not be admitted (Oberhammer/Weber, loc. cit., Art. 84 CPC no. 3).

6.2 The enforceability of a judgment requires that the content and extent of the enforceable claim be clearly and unequivocally set out in the enforcement order. This does not require that all information relevant for enforcement be taken directly from the operative part of the decision to be enforced, provided that reference is made to other documents that are clear and unambiguous. It is also considered permissible for the enforcement judge to refer to the reasoning of the judgment in order to ascertain the content and extent of the obligation to be enforced, provided that this makes it possible to ascertain clearly the scope of the enforcement. Finally, enforceability is not hindered by the fact that, due to specific technical terms in the enforcement order, an expert must be consulted in order to effect the enforcement (see Huber, Die Vollstreckung von Urteilen in der Schweizerischen ZPO, in: Bohnet/Domej/Haas/Jeandin/ Mabillard/Markus/Oberhammer/Schwander/Staehelin/Sutter-Somm/Tappy [ed.], Schriften zum Schweizerischen Zivilprozessrecht [ZPR] 2016 para. 58 et seq. and 62).

6.3 The Defendant asserts that the Claimant's prayer for relief concerning the reduction of CO_2 emissions is formulated in an insufficiently specific manner. It asserts that the prayer is addressed to an indefinite number of persons, so an individual order is thus not being sought and that it is unclear from a personal perspective. The conduct to be refrained from is also insufficiently determined in objective terms. The concept of greenhouse gases is not defined in legislation. It is all the more unclear what is meant by scope 1, 2 and 3 greenhouse gas emissions and on what basis the absolute and relative reductions are to be measured. The Claimants delineate between “direct”, “indirect” and “all other emissions”, via the use of examples. However, examples cannot be used to define an unclear term. The Federal Council, in turn, referred to scope 3 emissions as those that occur along the entire value chain, although the value chain does not

begin or end with the company. As a result, the Claimants are also interested in third-party emissions.

There is currently no binding regulation on climate reporting. In particular, Art. 964b SCO, which governs the reporting obligation on the CO_2 targets of larger companies, does not contain any binding requirements on climate targets, measures or standards. The Ordinance on Reporting on Climate-related Matters (*Verordnung über die Berichterstattung über Klimabelange*) does not contain any statutory or supplementary provisions. Because there are no international standards, scope 3 emissions are not defined uniformly in reports. The delineation between scope 2 and 3 as well as between direct and indirect emissions is also amended on a regular basis. In addition, the Claimants are relying on the current state of science, although the steps necessary for climate protection need to be continuously reassessed and the recommendations for reporting are also constantly changing. This is particularly true of climate reporting under the GHG Protocol, which is based on assumptions and is subject to constant change. There are also gaps in the methods used to measure emissions, as well as duplication, as the same emissions are measured and reported by different companies. It is therefore unclear who should refrain from emitting CO_2 and to what extent. It is not justified to determine the reduction of CO_2 based on a company's climate reporting, as this is not an objective measure. In addition, it is left open as to when emissions should cease. The prayer for injunctive relief is therefore insufficiently specific.

It is not possible for enforcement and criminal authorities to control the absolute and relative reduction of emissions without examining the facts. As regards the content and the scope of enforcement, the considerations in the enforcement order are decisive. On the other hand, the enforcement court may not call on further documents or experts. Nor may it interpret any unclear technical terms, as otherwise factual submissions that were not assessed in the judgment on the merits would participate in the effect of res judicata. The substantive legal position extends into the future only until the legally relevant facts change. In the present case, it is safe to assume that the circumstances will change, as the climate and the measures are subject to significant change. However, these changes in facts cannot affect the final force of a judgment on the merits. In addition, the Claimants are demanding group-wide compliance with the reduction in greenhouse gases, which requires multinationally coordinated enforcement. A review of enforcement measures should therefore take place at the foreign subsidiaries of the Defendant against whom the action is brought. There is no basis for this in Switzerland. It is also unclear by how much emissions are to be reduced in which country (file 18 para. 14 and 211-220; file 36 para. 210-235; file 46 para. 53-59).

6.4 The Claimants argue, on the other hand, that the terms “greenhouse gas emissions” and “scopes 1, 2 and 3” are sufficiently clearly defined. The Defendant itself uses these terms in the context of its climate strategy. The action shall prohibit the Defendant from emitting more greenhouse gases than is compatible with the goal of limiting global warming to 1.5°C. Compliance with the required reduction path could, if necessary, be verified by an expert as part of the enforcement procedure. The Claimants’ prayers for relief are limited to CO_2 emissions, as the Defendant confined its reporting in 2019 to

these emissions and the Defendant has not provided any figures for other greenhouse gases, such as methane, that would serve as a basis for the reduction obligation. The annual disclosure and publication of all greenhouse gas emissions across all three scopes is part of the reporting requirement for companies pursuant to Art. 964a SCO. In addition, this reporting must relate to all controlled undertakings (Art. 964b(4) SCO). The Defendant had already carried out such reporting before the Ordinance on Climate-related Reporting came into force. For the proof of scope 1, 2 and 3 emissions, the Defendant is relying on the GCCA standards, which, in the Defendant's view, are harmonised with the GHG Protocol in order to ensure uniformity and comparability.

In addition, the Defendant (and not the foreign subsidiaries), as the responsible parent company, is under an obligation to reduce emissions across the group. This is why no enforcement measures against the subsidiaries have been requested. The Defendant dictates the climate strategy for the entire group, and its subsidiaries are required to give account of their own emissions. A review of enforcement measures should thus be carried out at the Defendant's premises in Switzerland, and it is not necessary to measure emissions abroad. In addition, with its – albeit insufficient – climate strategy, the Defendant itself assumes that the reduction is calculable and determinable. In addition, the Claimants' prayers for relief are worded in the same way as the Defendant sets its climate targets itself, which means that it is also sufficiently specific with regard to time. Immediate action on the part of Defendant is thus required. In order to enforce the prayer for relief, the grounds given as part of the merits of the case may be used to interpret the operative part of the judgment. However, this substantive examination is not currently the subject of the proceedings (file 1 para. 52-55; file 26 para. 254-271; file 40 para. 68-89).

6.5 In the present case, the Claimants are requesting a gradual reduction of group-wide CO_2 emissions with regard to scope 1, 2 and 3 emissions. Output is to be reduced annually compared to 2019 levels by a percentage specified by the Claimants until 2040.

6.5.1 The Defendant first complains that the terms “scope 1, 2 and 3 emissions” are vague. In this regard, it should be noted that the Defendant is obligated pursuant to Art. 964a SCO to prepare an annual report on environmental issues, particularly its CO_2 targets (see file 40/10 p. 434). This report must include information on the climate impact of its business activity (see Art. 964b(1) SCO). Reporting is also regulated by the Ordinance on Reporting on Climate-related Matters (SR 221.434; hereinafter: Climate Ordinance). Climate-related issues include the impacts of climate change on companies and the impacts of companies' business activity on climate change (Art. 1(2) of the Climate Ordinance). Pursuant to Art. 2(1) in conjunction with Art. 3 of the Climate Ordinance, the reporting obligation is presumed to be fulfilled if it is based on the recommendations of the “Task Force on Climate-related Financial Disclosures” (hereinafter: TCFD) and contains, in particular, quantitative CO_2 targets and, where applicable, targets on other greenhouse gases, as well as information on all greenhouse gas emissions (Art. 3(4)(a) and (b) of the Climate Ordinance). The recommendations of the TCFD also include guidance on how to measure greenhouse gas emissions, in particular for scope 1, 2 and 3 emissions. In this regard, reference is made to

the methodology of the so-called Greenhouse Gas Protocol (hereinafter: GHG Protocol) (see file 40/8, p. 21). The Ordinance on the Federal Act on Climate Protection Goals, Innovation and Strengthening Energy Security (*Verordnung zum Bundesgesetz über die Ziele im Klimaschutz, die Innovation und die Stärkung der Energiesicherheit*, SR 814.310.1; hereinafter: CPO; Art. 2(4) in conjunction with Annex I CPO) is based on this Protocol. In its explanations of the CPO of 27 November 2024, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) stated that there are recognised definitions of direct, indirect and upstream and downstream emissions in the GHG Protocol, and that these definitions have established themselves as the standard for calculations according to current scientific knowledge (file 40/9, pp. 13-14). At the international level, the GHG Protocol for scope 3 emissions is even regarded as a global standard (file 40/3, para. 7.99).

Contrary to the Defendant's allegations, it is therefore not unclear what scope 1, 2 and 3 emissions are. In its climate strategy, the Defendant itself refers to these three types of emissions and indicates by what percentage it intends to reduce them in detail (file 18/42 p. 17). However, if these terms were unclear to the Defendant, it would not be able to set targets in relation to these emissions. In addition, the Defendant itself relies on the latest emission accounting protocols for its reporting of scope 1, 2 and 3 emissions and reports its GHG emissions in accordance with the GHG Protocol (see file 40/11 p. 72: “...we ensure rigorous emissions accounting for both our direct and indirect CO_2 emissions based on the latest emissions accounting protocols”; file 40/10 p. 405: “Absolute GHG emissions”; file 18/42 p. 101: “The carbon related indicators [...] are aligned with GHG protocols.”). In addition, the Defendant had the documented key figures verified (act 40/10 pp. 416-417). It can therefore be assumed that the Defendant's reporting is being done properly in relation to all scopes. Enforcement can thus rely on the Defendant's reports. Based on the currently available scientific findings, it is therefore quite possible to verify whether any positive performance obligations have been complied with. In addition, unclear terminology could be clarified in the main proceedings (prior to enforcement proceedings), which would preempt any interpretation of these terms by the enforcement court (see BGE 131 III 70 consid. 3.3).

The prayer for relief and the grounds for the action (see file 26 para. 256) indicate that the reduction should occur compared to 2019. In 2019, the Defendant caused a total of 148 million tonnes of CO_2, or 598 kg of CO_2 per tonne of cement-containing material. Scope 1 emissions accounted for 121 million tonnes, scope 2 emissions for 8 million tonnes and scope 3 emissions for 19 million tonnes. On this basis, the annual reduction can be calculated as a percentage. Consequently, if the prayers for relief were granted, the prosecution and enforcement authorities would not be confronted with insoluble questions of delimitation and interpretation. Accordingly, the request for an injunction is sufficiently specific in factual and temporal terms.

6.5.2 The Defendant also complains of the personal vagueness of the request for an injunction. The Defendant contends that it is being required to engage in group-wide conduct that extends to the conduct of its subsidiaries, which are not being sued. As no action has been taken against its subsidiaries, the boundary between legally independent entities existing in the law on corporate groups is being broken, which is not permissible (file 18 para. 15).

In the event of infringements of personality rights, it is primarily the perpetrator of the infringement who has committed the infringement, i.e. anyone who contributes to the infringement of personality rights, including auxiliaries and assistants. It is for the injured party to decide against whom an action is to be brought. Where two or more persons collaborate in infringements of personality rights, they are jointly and severally liable to an equal extent and their individual contributions to the offence are irrelevant in civil law. In the case of infringements of personality rights, fault is irrelevant (see Meili, loc. cit., Art. 28 SCC no. 37). The Defendant's board of directors approves the climate-related targets for the company and is responsible for the climate-related risks (see file 1/25 p. 88). In this regard, the Defendant thus has management authority over its subsidiaries (see Buchers/Müller, Die Haftung einer Muttergesellschaft und ihre Organe für Geschehnisse im Hause der Konzerntochter – ein Zusammenspiel diverser Anspruchsgrundlagen, in: Böhme/Gähwiler/Theus Simoni/Zuberbühler [ed.], Festschrift für Willi Fischer, Ohne jegliche Haftung, 2016, p. 52). The Defendant therefore participates in greenhouse gas emissions, even if these occur through its subsidiaries, since it sets out the climate strategy for the entire group in a binding manner. As the claim is expressly directed at the Defendant, the request for injunctive relief is also sufficiently specific from a personal perspective.

6.5.3 Apart from the foregoing, liability for tort pursuant to Art. 41 et seq. CO also applies in group relationships. Climate actions that rely on these legal bases are generally directed against a (raw materials) company, and in the group context typically against the parent company (see Jentsch, Klimaklagen gegen Rohstoffunternehmen, loc. cit., pp. 65 et seq.). The latter may namely be liable as a de facto body of the subsidiary (see Böckli/Bühler, in: Forstmoser/Druey [eds.], Schriften zum Aktienrecht, Zur Konzernverantwortungsinitiative, 2018, p. 53). As substantive standing is not a procedural prerequisite but concerns substantive law (see BGE 139 III 504 consid. 1.2; Domej, loc. cit., Art. 67 CPC no. 20), there is no need to make any further remarks on this issue here.

6.5.4 In can be concluded that the prayer for injunctive relief is sufficiently specific. This enables the Defendant to see what it has to defend itself against, and it is clear for the court what the subject-matter of the dispute is, based on the principle of delimiting the scope of the case.

7. There is no need to comment on the other procedural requirements. The claim must therefore be admitted.

8. This conclusion is moreover also justified in light of Art. 29a Cst., which provides that every person has the right to have their case reviewed by a judicial authority in the event of a legal dispute. Art. 29a Cst. confers a right under individual law to judicial protection – i.e. to assessment by a judicial authority with full review of the facts and the law, provided that there is a legal dispute. The Federal Supreme Court interprets the term “legal dispute” as meaning that the dispute must be connected to an individual legal position worthy of protection (see BGE 149 I 146 consid. 3.3.1 and 144 II 233 consid. 4.4). It is sufficient for the direct impact on the rights in the individual case to appear plausible and understandable. Individual legal positions worthy of protection arise from legal norms that grant individuals rights to a specific act or omission (“claim norms”) or that seek to protect their interests (“protective norms”). For the scope of application of

Art. 29a Cst. to be triggered, there is no requirement for an encroachment or even an infringement of the individual legal positions; however, a certain degree of intensity of the impact is required. It also covers all legal disputes, regardless of whether they are civil, criminal or administrative in nature (see Waldmann, loc. cit., Art. 29a Cst. No. 10).

Since, according to the foregoing, the Claimants are specifically impacted in relation to the alleged infringements of personality rights (see consid. 5.4 et seq.), they also have the right, based on the constitutional right of recourse, to have their claim examined on the merits.

9. In conclusion, the court must rule on the award of court and party costs. As a rule, the court only decides on the procedural costs in the final decision (Art. 104(1) CPC). In the event of an interim decision, however, the procedural costs incurred up to that point may be allocated (Art. 104(2) CPC).

9.1 The decisive element for classifying a court order as a final decision, interim decision or procedural ruling is the content of the order (see BGE 139 V 42 consid. 2.3, 136 V 131 consid. 1.1.2; Killias, loc. cit., Art. 236 CPC no. 14; Staehelin, in: Sutter-Somm/Lötscher/Leuenberger/Seiler [ed.], Kommentar zur Schweizerischen Zivilprozessordnung, 4th ed. 2025, Art. 236 no. 10). A final decision is either a decision on the merits or a decision not to consider the merits (Art. 236(1) CPC), whereby the proceedings are concluded before the court dealing with the action. On the other hand, an interim decision as defined in Art. 237 CPC does not conclude the proceedings. Rather, such a decision is issued in the course of the proceedings and is merely a step on the way to a final decision. It serves to clarify certain questions before proceeding at first instance. Interim decisions are used to make decisions as to the merits of a substantive prerequisite for a claim on which the existence of the fundamental elements of the claim depends, or a procedural prerequisite. Although an interim decision does not end the proceedings, a different assessment at higher instance of the issues addressed would result in the proceedings being closed (Killias, loc. cit., Art. 237 CPC nos. 3 et seq.; Schmid/Brunner, loc. cit., Art. 237 nos. 6-8; Sogo/Naegeli, in: Oberhammer/Domej/Haas [ed.], Kurzkommentar zur Schweizerischen Zivilprozessordnung, 3rd ed. 2021, Art. 237 CPC nos. 1-2). Procedural rulings are orders issued by the court whose purpose is to ensure the orderly and expeditious handling of the proceedings and thus dictate the formal structure of the proceedings; accordingly, these rulings are issued – in the same way as interim decisions – in the course of the proceedings. Unlike interim decisions, however, procedural rulings do not address any formal or substantive issues relating to the matter in dispute. They therefore do not refer to the admissibility or merits of the action, and a different assessment at higher instance would also not result in a final decision (Killias, loc. cit., Art. 237 CPC nos. 17 et seq.; Weber, in: Oberhammer/Domej/Haas [ed.], Kurzkommentar zur Schweizerischen Zivilprozessordnung, 3rd ed. 2021, Art. 124 CPC no. 3; Sogo/Nageli, loc. cit., Art. 237 CPC no. 2).

9.2 The purpose of this decision is to assess procedural requirements. Once the claim is admitted (see consid. 7), the proceedings will be continued. However, if the Supreme Court of the Canton of Zug were to conclude in any appeal proceedings

that the procedural requirements were not met, this would result in a decision not to admit the case and to close the proceedings. The present decision on whether to admit the case is therefore an interim decision.

9.3 The question is whether the procedural costs incurred in connection with the interim decision should already be allocated at this stage (Art. 104(2) CPC). The overwhelming view in academic literature maintains with regard to Art. 104(2) CPC that a court making an interim decision is free to reserve the rules on court and party costs (as such) for the final decision. This is to be interpreted as meaning that in the context of an interim decision, one may dispense not only with the distribution (allocation) of the procedural costs incurred up to that point, but also with the determination of their amount (see Sterchi, Berner Kommentar, loc. cit., Art. 104 CPC no. 4; Hofmann/Baeckert, Basler Kommentar, loc. cit., Art. 104 CPC no. 10; see also Gasser/Rickli/Josi, Kurzkommentar, 3rd ed. 2025, Art. 104 CPC no. 2; in general also: judgment of the Cantonal Court of Graubünden ZK2 14 14 of 21 May 2014 consid. 4b).

9.4 In this case, no determination or allocation of procedural costs are to be made. Unlike a (substantive) interim decision – such as a finding of liability in an action for damages or the rejection of an objection for being time-barred – the action in the present case has not been examined from a substantive legal perspective. There is a procedural decision that affirms that the prerequisites for the admissibility of the Claimants' prayers for relief have been met. When examining the procedural requirements, however, no decision is taken as to which party prevails or is unsuccessful in substantive law. Only an examination of the action under substantive law will make it possible to determine which party is liable to pay court and party costs within the meaning of Art. 106 et seq. CPC. The determination and allocation of the procedural costs in this interim decision is therefore not appropriate. If the interim decision is contested and the appellate court makes a new decision, it shall also rule on the procedural costs of the proceedings at first instance (Art. 318(3) CPC). The decision on the procedural costs is thus to be made in the final decision.

Decision

1. The action of 30 January 2023 is admissible.

2. The decision on procedural costs is to be made in the final decision.

3. This decision may be appealed to the Higher Court of the Canton of Zug in writing, stating the grounds and setting out the specific relief sought, within 30 days of service, enclosing a copy of the contested decision. An objection may be lodged on the grounds of the incorrect application of the law and/or the incorrect establishment of the facts (Art. 310 CPC). The appeal brief may be filed in paper form (one copy for the court and one copy for each opposing party) or electronically, bearing a qualified electronic signature (Art. 130(1) and (2) CPC).

4. Notice to be given to:
   - Parties
   - Court cashier

Cantonal Court of the Canton of Zug
1st Division

[signature] [signature]

R. Ackermann
Cantonal Judge

P. Sterchi
Court Clerk

sent on: [stamp:] **1 8 DEC. 2025**
sts

[stamp:] CANTONAL COURT CANTON OF ZUG