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La CEDU su vittima dell'amianto e prescrizione in Svizzera
(CEDU, sez. III, sent. 13 febbraio 2024, ric. n. 4976/20)

La Corte Edu si pronuncia sul caso del parente dei ricorrenti, morto nel 2006 per cancro alla pleura, presumibilmente causato dall'esposizione continuata all'amianto, risalente agli anni '60 e '70.
Il sig. XXXXX, infatti, viveva in una casa affittata dalla Eternit AG nelle immediate vicinanze di uno dei loro stabilimenti, dove veniva lavorato l'amianto. Infruttuosi i procedimenti instaurati sul piano penale nel 2006 e su quello civile nel 2009 (rispettivamente prima e dopo la morte di XXXXX).
Il Tribunale Federale aveva stabilito che le azioni civili erano prescritte, avendo ritenuto che, nel computo del termine decennale di prescrizione, il *dies a quo* dovesse coincidere con la fine dell'atto dannoso, indipendentemente dal momento della conoscenza del danno subito.
Sul presupposto che, invece, nel calcolo del termine di prescrizione debba essere presa in considerazione la possibilità che una persona non sappia di soffrire di una determinata malattia, cosa molto probabile nel caso di specie anche in considerazione dei dati che rivelano la lunga latenza di tale malattia, con il decorso di periodi lunghi tra l'esposizione all'amianto e la manifestazione del mesotelioma dallo stesso causato - i Giudici di Strasburgo hanno riconosciuto, all'unanimità, l'avvenuta violazione dell'art.6 § 1 (diritto ad un giusto processo), per l'impossibilità di accesso ad un tribunale causata dalla decisione sulla prescrizione, nonché la violazione dell'art. 6 § 1 della Cedu per l'eccessiva durata dei procedimenti nazionali (ingiustificata sospensione del processo innanzi al Tribunale Federale per oltre quattro anni e mezzo).

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

THIRD SECTION

CASE OF XXXX AND XXXX v. SWITZERLAND

(Application no.4976/20)

JUDGMENT
STRASBOURG
13 February 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX and XXXXX v. Switzerland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Pere Pastor Vilanova, *President*,
Jolien Schukking,
Yonko Grozev,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 4976/20) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Swiss nationals, Ms Regula Jann-Zwicker and Mr Gregor Jann ("the applicants"), on 14 January 2020;

the decision to give notice to the Swiss Government ("the Government") of the complaints concerning access to a court and the length of the proceedings and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 23 January 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the applicants' complaints under Article 6 § 1 of the Convention about an alleged breach of their right of access to a court on account of the manner in which the beginning of the ten-year absolute limitation period in respect of asbestos-related claims for damages had been determined by the domestic courts. It also concerns the length of the proceedings at issue.

THE FACTS

2. The applicants were born in 1948 and 1983, respectively; they live in Thalwil and Zürich, respectively. They were represented by Mr M. Hablützel, a lawyer practising in Zürich.

3. The Government were represented by their Agent, Mr A. Chablais, of the Federal Office of Justice.

4. The facts of the case may be summarised as follows.

I. BACKGROUND OF THE CASE

5. The applicants are, respectively, the widow and son of Marcel Jann, who was born in 1953. From 1961 until 1972 Marcel Jann lived with his parents in Niederurnen in a house owned by and rented from a company, Eternit AG (hereinafter "Eternit"), in the immediate vicinity of Eternit's factory grounds, where fibrous asbestos minerals were processed into asbestos cement panels. According to his own statements, Marcel Jann had frequently been exposed to asbestos from the Eternit factory at that time in several ways. Firstly, the dust emissions from the factory had regularly entered through his open bedroom windows. Secondly, as a child, Marcel Jann had often played on and around panels and pipes used by the Eternit factory. Furthermore, he had regularly watched the unloading of the asbestos bags at the railway station. After moving away from Niederurnen in 1972 at the age of 19 – again according to his own statements – he had never again been in contact with asbestos.

6. A general ban on asbestos was introduced in Switzerland in 1989 (see *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, § 9, 11 March 2014).

7. In the autumn of 2004 Marcel Jann was diagnosed with malignant pleural mesothelioma (pleural cancer) that was presumed to have been induced by exposure to asbestos. He died from the illness on 30 October 2006 at the age of 53.

8. In July 2006 (that is, prior to his death) Marcel Jann expressed, in written form, his wish that his rights in respect of his asbestos-caused disease be upheld and that his claims and those of his heirs be enforced – even after his death.

II. PROCEEDINGS BEFORE THE DOMESTIC COURTS

A. Criminal proceedings initiated by Marcel Jann before his death

9. On 18 September 2006 Marcel Jann lodged a criminal complaint alleging grievous bodily harm with the investigating authority (*Verhöramt*) of the Canton of Glarus.

10. On 9 October 2006, after undertaking certain initial investigative measures, the investigating authority decided not to initiate an investigation.

11. On 12 September 2007 the Glarus Cantonal Court (*Kantonsgericht*) upheld that decision.

12. On 11 August 2008 the Federal Court (*Bundesgericht*) dismissed an appeal against that decision.

B. Mediation proceedings initiated by the applicants after Marcel Jann's death

13. On 23 March 2009 the applicants lodged an application with the mediator's office (*Vermittleramt*) of the Canton of Glarus of the case. A hearing was held on 3 June 2009, but no agreement could be found.

C. Civil proceedings initiated by the applicants after Marcel Jann's death

1. Before the Cantonal Court

14. On 16 July 2009 the applicants, as Marcel Jann's legal heirs, brought an action in the Glarus Cantonal Court against the following counterparties (the four defendants): a) Eternit (Schweiz) AG,

as the alleged legal successor of the company (Eternit AG, see paragraph 5 above) that had operated the Niederurnen factory and had owned the house in which Marcel Jann had lived during the period in question; b) the two sons (Stephan and Thomas Schmidheiny) of Eternit's previous owner (Max Schmidheiny), who had both held senior positions in Eternit in the 1970s and 1980s; and c) Swiss Federal Railways (*Schweizerische Bundesbahnen*, SBB). Their action encompassed contractual and non-contractual claims for damages that cited several grounds for liability – namely, liability arising from land ownership (*Haftung aus Grundeigentum*), from a rental contract (*Haftung aus Mietvertrag*), from ownership of a factory (*Werkeigentümerhaftung*), from tort (*Haftung aus unerlaubter Handlung oder Unterlassung*) and from the ownership of a business (*Geschäftsherrenhaftung*). They sought 110,000 Swiss francs (CHF), plus interest, in compensation for the emotional distress suffered by Marcel Jann.

15. The applicants argued that neither their contractual nor extra-contractual claims had become time-barred. In respect of contractual liability they argued that the limitation period provided by law began to run from the moment that the claim became due (which was when the damage occurred) – that is, (in the case in question) when Marcel Jann had died in October 2006 (see paragraph 7 above). In respect of non-contractual liability they argued that both the one-year relative limitation period (that is, the period that started to run from the moment of becoming aware of the damage in question and the identity of the person liable for that damage) and the ten-year absolute limitation period (that is, the length of time after which the matter in question is always statute-barred) had not yet elapsed. While the criminal proceedings had been ongoing, the beginning of the relative limitation period had been put off until the final judicial decision had been delivered in August 2008 (see paragraphs 9-12 above). Likewise, the beginning of the absolute limitation period had only begun to run with the commission of the "harmful act" (*schädigende Handlung*), which was to be interpreted as the point in time at which the harm (that is to say damage) had first become manifest. Lastly, the limitation period in respect of omissions (*Unterlassung* – that is, a failure to act) had begun to run at the last possible moment at which the defendants could have acted to prevent or mitigate any damage – which in Marcel Jann's case had been in the early 2000s, when his cancer had been in its initial stages. The applicants further argued that their interpretation of the underlying domestic provisions was also required by Article 6 of the Convention, as a rejection of their claims on the grounds that the relevant time-limit had lapsed would render their right of access to a court purely fictitious.

16. On 29 March 2012 the Cantonal Court rejected the applicants' claims on account of the lapse of the limitation period. It also noted that the claim for damages from a rental contract was brought against the wrong defendant (because the original company, Eternit AG, had sold the house in question before it had been restructured several times and eventually resulted in the company called Eternit (Schweiz) AG). Referring to the case-law of the Federal Court, the Cantonal Court held in essence that limitation periods began to run when a claim became due. In cases of tort claims in respect of personal injury (whether caused by an act or failure to act), a claim became due when the act (or failure to act) that had caused the injury in question took place – even in the event that its consequences became apparent only later. To link the beginning of the limitation period to the perception of injuries would be to counteract legal certainty, which was the main purpose of the existence of a time-limit. Therefore, in the present case, the claim had

become due at the latest in 1972, when Marcel Jann had moved away from his parents' home (see paragraph 5 above). The claim had accordingly become statute-barred ten years later – that is, in 1982.

The Cantonal Court further held that this interpretation of the underlying domestic provisions was in conformity with Article 6 of the Convention. Referring again to the case-law of the Federal Court, it considered that the right of access to a court, as guaranteed by Article 6 of the Convention, was not absolute and that a limitation period of ten years constituted a proportionate length of time and that it served the purpose of legal certainty – especially considering that the State afforded other means of relief to asbestos victims under the accident-insurance law (*Unfallversicherungsrecht*): specifically, in the form of care services (*Pflegeleistungen*), pension benefits (*Rentenleistungen*) and "integrity compensation" (*Integritätsentschädigung*) – irrespective of whether or not the limitation period had elapsed.

2. Before the Court of Appeal

17. On 4 July 2012 the applicants lodged an appeal with the Court of Appeal (*Obergericht*) of the Canton of Glarus.

18. On 4 October 2013 the Court of Appeal upheld the judgment of the Cantonal Court, referring again to the relevant case-law of the Federal Court regarding the start of limitation periods. As regards omissions, it held that it had been correct to link the beginning of the limitation period to Marcel Jann's exposure to asbestos, given the fact that that event (and not any subsequent failure to inform him) had caused the harm in question. In any event, any specific duty to inform him would have ended when the dangers of asbestos had become known to the public in the 1980s. A claim in this respect would thus have also become statute-barred before the applicants had lodged their claim in 2009 (see paragraph 14 above). The Court of Appeal further referred to the case-law of the Federal Court affirming the compatibility – within the context of asbestos-related cases – of the underlying domestic provisions regarding time-limits with Article 6 of the Convention.

3. Before the Federal Court

19. On 6 November 2013 the applicants lodged an appeal with the Federal Court. At the same time, they also requested the suspension of the proceedings until the delivery of a decision in the case of *Howald Moor and Others* (cited above), which was then pending before the Court. The applicants maintained that the limitation period in respect of contractual claims would only start to run from the moment that the claim in question arose – in their case at the earliest from the outbreak of Marcel Jann's illness (namely, in 2004). To hold otherwise would mean that compensation claims would routinely be time-barred in view of the long latency period between the moment of exposure to asbestos and the outbreak of the disease of mesothelioma. The applicants also submitted that in the 1980s the specific conditions of Marcel Jann's exposure to asbestos (that is, non-direct and non-permanent) had not yet been known to have the potential to give rise to health-related dangers.

Interpreting the underlying domestic provisions in such a manner that claims such as that lodged by the applicants were deemed to be time-barred was in breach of their right of access to a court under Article 6 of the Convention, as the application of the relevant time-limit would systematically deprive the persons concerned of effective legal redress. Given the fact that the latency period of the

disease of mesothelioma was between fifteen and twenty-five years (whereas the statutory time-limit for lodging a claim was ten years), asbestos victims would never have a chance to act in a timely manner. Such a time-limit could not serve the legitimate aim of creating legal certainty for debtors (*Schuldner*) in cases like the instant one – that is to say in the event that victims were unaware that a tortious act had occurred, the victims' inaction in respect of that tort claim (for example, the fact that they did not lodge a claim with a court) could not create the expectation that they had relinquished or would relinquish such claims.

(a) Suspension of the proceedings before the Federal Court

20. On 8 April 2014 – after the Court had delivered its judgment in the case concerning *Howald Moor and Others* (cited above) on 11 March 2014 – the Federal Court suspended the proceedings, having decided to await the outcome of the proposed revision of the legal provisions (relating to the limitation periods that applied to the lodging of various kinds of claims under civil law) which was then being debated in Parliament (see paragraph 28 below).

21. On 30 June 2014 the applicants lodged a request with the Federal Court for it to reconsider the suspension of the proceedings. They noted that the judgment in the case of *Howald Moor and Others* (cited above) had become final on 11 June 2014 and argued that there was no reason for the continued suspension; they argued that the domestic courts should not wait for a revision of the legal provisions relating to the statute of limitations but should rather interpret the domestic law, as in force at that time, in a Convention-compliant way. Thus, a further delay in the proceedings would violate both the Constitution and Article 6 of the Convention.

22. On 3 July 2014 the Federal Court refused the applicant's request for it to reconsider the suspension of the proceedings, deeming that there had been no change in circumstances that could justify such a step.

23. On 15 June 2018 Parliament voted to revise the statute of limitations and extended the absolute limitation period at issue to twenty years, without retroactive effect (see paragraph 31 below).

24. On 31 August 2018 the applicants again lodged a request with the Federal Court for it to end the suspension of the proceedings, referring to the above-mentioned revision by Parliament of the statute of limitations (see paragraph 23 above). The counterparties (the four defendants), on the other hand, pleaded in their submissions of 20, 24 and 25 September and 15 October, respectively, that the proceedings should remain suspended until the entry into force of the new legal provisions.

(b) Resumption of the proceedings before the Federal Court

25. On 6 November 2018 the Federal Court allowed the applicants' request and resumed the proceedings. It noted that the legal reform had been adopted by Parliament on 15 June 2018 (see paragraph 31 below) and that no referendum had been announced in respect of it before the deadline for doing so (namely, 4 October 2018). Consequently, the reason for suspending the proceedings had ceased to exist.

26. On 6 November 2019 the Federal Court upheld the judgment of the Court of Appeal (see paragraph 18 above) and dismissed the applicants' claims (BGE 146 III 25). Noting that a

foundation had been set up to administer a compensation fund for asbestos victims (*Stiftung Entschädigungsfonds für Asbestopfer* – hereinafter "the EFA Foundation"; see paragraphs 33-34 below), it held that the new domestic provisions regarding the statute of limitations – which extended the absolute limitation period in cases of killing or causing bodily injury to twenty years – were not applicable to the applicants' case. The Federal Court pointed out that, as regards the interpretation of limitation period, it had not changed its case-law since the delivery of the judgment in *Howald Moor and Others* (cited above), contrary to what the applicants had argued. Consequently, a limitation period began to run when the harmful act in question was committed – not when knowledge was acquired of the harm caused. In respect of contractual liability, the moment at which the injuring party breached its contractual duties, whether by act or failure to act, constituted the relevant point in time; in respect of non-contractual claims, the breach of the duty of care constituted the relevant point in time. Therefore, all claims based on acts committed in or before 1972 had become statute-barred by the time that the applicants had brought their action in 2009.

27. The Federal Court furthermore held that the right of access to a court guaranteed by Article 6 of the Convention, as interpreted by the Court in its judgments in the cases of *Howald Moor and Others* (cited above) and *Stubbings and Others v. the United Kingdom* (22 October 1996, *Reports of Judgments and Decisions* 1996-IV), was compatible with the existence of absolute limitation periods. On the basis of this understanding of Article 6 of the Convention, it was not disproportionate to dismiss a claim thirty-seven years after the last possible moment at which the harmful act in question had occurred. In the light of this, it could remain open to question to what extent the setting-up of the EFA Foundation (see paragraphs 33-34 below) constituted one of the other possible solutions (under the existing legislation) in respect of claiming damages, as it had been called for in the judgment in *Howald Moor and Others* (cited above, § 78) – irrespective of whether the applicants would indeed be able to benefit from the EFA Foundation.

III. OTHER RELEVANT DEVELOPMENTS AT DOMESTIC LEVEL CONCERNING ASBESTOS VICTIMS

A. Legislative reform of the statute of limitations for claiming damages in cases of killing of persons or bodily injury

28. On 29 November 2013 the Federal Council (*Bundesrat*) submitted draft legislative proposals to Parliament with a view to the latter body amending the limitation periods that applied to the lodging of certain kinds of claims under civil law, including, notably, a proposal that the ten-year absolute limitation period be increased to thirty years (see *Howald Moor and Others*, cited above, §§ 42 and 54-57). No transitional provisions were set out in respect of persons whose claims had already become time-barred under the law as then in force.

29. On 14 August 2014 the Legal Affairs Committee (*Kommission für Rechtsfragen*) of the National Council (*Nationalrat*) proposed the creation of a special compensation fund for asbestos victims whose claims had become time-barred. On 28 May 2015 the proposal was withdrawn in view of the results of a round table on asbestos held in February 2015 (see paragraph 33 below).

30. On 15 December 2015 the Council of States (*Ständerat*), as the second chamber of the State parliament, proposed a transitional solution for asbestos victims. On 29 May 2018 the transitional

solution was revoked in view of the creation of the EFA Foundation in March 2017 (see paragraphs 33-34 below).

31. On 15 June 2018 Parliament enacted a new statute of limitations, which, *inter alia*, added new provisions to the Code of Obligations (*Obligationenrecht*). The absolute limitation period for claiming damages in respect of the killing of a person or of bodily injury was increased from ten to twenty years, starting from the moment at which the harmful conduct in question occurred or ceased (see the new Article 60 § 1*bis* and the new Article 128a of the Code of Obligations in paragraphs 41-42 below). No referendum was proposed in respect of the legislative changes before the deadline for doing so (namely, 4 October 2018), and the new provisions entered into force on 1 January 2020.

32. The records of the parliamentary debates show that the discussions also touched upon the question of the determination of the point in time at which the running of the limitation periods begins (*dies a quo*). In this context, it was also noted that the law could not solve all problems and that the Federal Court would have to contribute to finding a solution in practice. Notably the issue of the running of the limitation period in the case of illnesses that manifest themselves only after a long period of time has passed needed to be addressed by the domestic courts.[1]

B. The setting-up of the EFA Foundation

33. On 26 February 2015 a round table was held on the initiative of the authorities to discuss the difficulty faced by asbestos victims in lodging claims for damages and to find consensual solutions for those victims who could not benefit from mandatory (professional) accident insurance (*Unfallversicherung*). As a result, it was decided to set up a special private-law foundation to administer a compensation fund for asbestos victims – the EFA Foundation. It was formally founded on 28 March 2017 and became operational on 1 July 2017.

34. Under the EFA Foundation's regulations governing compensation payments (*Entschädigungsreglement* – hereinafter the "Compensation Regulations") – as adopted on 9 May 2017 – persons in whom the symptoms of mesothelioma had become apparent only after 1 January 2006 could apply for benefits from the EFA Foundation (Articles 3 and 8 of the Compensation Regulations). A "hardship clause" (*Härtefall-Klausel*) provided for the possibility to obtain an analogous solution in a "hardship situation" (Article 14 of the Compensation Regulations). However, the Compensation Regulations did not define what a "hardship situation" was.

In order to qualify to receive benefits from the EFA Foundation, the persons concerned had to formally waive their right to lodge any claim for damages with the domestic courts (Article 13 of the Compensation Regulations). Persons who had already lodged claims for compensation with the courts prior to the Compensation Regulations entering into force on 1 July 2017 could receive benefits from the EFA Foundation only if they provided proof that all procedural steps had been formally abandoned – that is, that their claims had been withdrawn (Article 2 of the Compensation Regulations).

35. On 31 March 2022 – that is, after the Government had been given notice of the present application – the Compensation Regulations were amended so as to provide the possibility for

persons in whom the symptoms of mesothelioma had appeared after 1996 (not only after 2006) to apply to the EFA Foundation to receive benefits (the amended Articles 3 and 8 of the Compensation Regulations), with retroactive effect.

36. The Government submitted that approximately 120 people are diagnosed with mesothelioma every year in Switzerland. Of these, some twenty to thirty persons are not entitled to benefits from the (mandatory) accident insurance, but only to those from the (mandatory) health insurance and (mandatory) invalidity insurance, which are less advantageous. According to the information available on the website of the EFA Foundation,[2] approximately 200 people are diagnosed with mesothelioma every year in Switzerland;[3] the majority of those cases have been caused by exposure to asbestos – mostly within the course of those persons' professional lives. Furthermore, again according to the information available on the website of the EFA Foundation, exposure to asbestos can lead to mesothelioma "also forty-five or more years [after exposure]" (*auch nach 45 Jahren und mehr*). According to the 2022 activities report of the EFA Foundation, as published on its website, 335 people applied to it requesting benefits between its creation in 2017 and the end of 2022 – an average of about five applications per month. In 2022, thirty applications were received.

C. Execution of the *Howald Moor and Others* judgment

37. On 11 March 2014 the Court delivered its judgment in the case of *Howald Moor and Others* (cited above), which concerned claims for damages based on malignant pleural mesothelioma which had been caused by exposure to asbestos but which had been ruled to be time-barred by the domestic courts. The Court notably considered that – taking into account the existing legislation in Switzerland in respect of similar situations, and without wishing to prejudge other possible solutions that could be contemplated – where it was scientifically proven that a person had been unable to know that he or she was suffering from a certain disease, such a circumstance (that is, the ignorance on the part of the sufferer) should be taken into account when calculating the limitation period (*Howald Moor and Others*, cited above, § 78). In the process of the execution of that judgment, the Government informed the Committee of Ministers that, *inter alia*, the EFA Foundation had been set up and that the absolute limitation period had been extended to twenty years (see paragraphs 31-34 above). On the basis of a Government action report of 3 April 2019 (document DH-DD(2019)403), the Committee of Ministers declared, on 25 September 2019, that it had exercised its functions under Article 46 § 2 of the Convention in respect of that case and had decided to close the examination thereof (Resolution CM/ResDH(2019)232).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW IN FORCE AT THE MATERIAL TIME

38. Article 60 § 1 of the Code of Obligations (*Obligationenrecht*) concerned the time-limit in respect of obligations in tort and read, at the relevant time, as follows.

> "The right to claim damages [*der Anspruch auf Schadenersatz*] or satisfaction [*oder Genugtuung*] becomes statute-barred three years from the date on which the person suffering damage became

aware of the damage [in question] and of the identity of the person liable for it, but in any event ten years after the date on which the harmful conduct occurred or ceased."

39. Article 130 § 1 of the Code of Obligations defined the start of the limitation period as follows:

"The limitation period commences as soon as the debt is due."

40. Under section 100(7) of the Federal Act on the Federal Court (*Bundesgesetz über das Bundesgericht*), an appeal may be lodged against an unlawful dismissal of or delay [in issuing] a decision (*unrechtmässiges Verweigern oder Verzögern eines Entscheids*) at any time.

II. LEGISLATIVE REFORM ENACTED IN 2018

41. Following the legislative reform in respect of the statute of limitations enacted by Parliament on 25 June 2018 (which came into force on 1 January 2020 – see paragraphs 28-31 above), a new absolute limitation period of twenty years in the case of the killing of a person or of bodily injury is now provided under Article 60 § 1*bis* of the Code of Obligations, which reads – in so far as relevant – as follows:

"In the case of the killing of a person or bodily injury, the right to claim damages or satisfaction becomes statute-barred three years from the date on which the person suffering damage became aware of the damage [in question] and of the identity of the person liable for it, but in any event twenty years after the date on which the harmful conduct occurred or ceased."

42. A similar new provision has been added in respect of contractual claims under Article 128a of the Code of Obligations, which reads as follows:

"Claims for damages or satisfaction arising from [the infliction of] bodily harm or the killing of a person, in breach of [duties arising from] a contract [*vertragswidrig*], shall become statute-barred three years after the day on which the injured party became aware of the damage, but in any event twenty years after the day on which the harmful conduct occurred or ceased."

43. The wording of the existing Article 134 § 1 (6) of the Code of Obligations was amended and now states that the limitation period does not begin and stands still if it has begun, for as long as a claim cannot be asserted before a court for objective reasons (*solange eine Forderung aus objektiven Gründen vor keinem Gericht geltend gemacht werden kann*).

III. DOMESTIC PRACTICE

44. The relevant domestic practice – notably as regards the starting point for the calculation of the limitation period (*dies a quo*) in the light of the case-law of the Federal Court – was summarised in the judgment delivered in respect of the case of *Howald Moor and Others* (cited above, §§ 47-48). In short, the starting point is determined according to the time at which the harmful act in question took place (or ended) and not according to the time at which the effects of that act began to be felt – even if this means that the limitation period ends before the effects

manifest themselves. Furthermore, in its decision of 16 November 2010 (BGE 137 III 16) – which was at issue in the case of *Howald Moor and Others* (cited above, §§ 34-39) – the Federal Court also noted that the latency period between exposure to asbestos and the manifestation of mesothelioma was between fifteen and forty-five years.

45. In a decision of 6 November 2019 (that is, on the same day as that on which the Federal Court issued its decision in respect of the present case – see paragraphs 26-27 above), the Federal Court partially granted an appeal lodged by the heirs of an asbestos victim who had been exposed to asbestos in the course of his professional duties over a long period of time (BGE 146 III 14). It noted, firstly, that it was not true (as argued by the complainants) that it had changed its case-law after the judgment in *Howald Moor and Others* (cited above). It further held, as regards the relevant former limitation period (see paragraphs 38-39 above), that if the victim had been exposed to asbestos for an uninterrupted period of time and if, from a medical point of view, it was not possible to determine the exact moment at which the disease had been caused, then the harmful act in question corresponded to the length of that exposure to asbestos. Assuming that no protective measure had been taken during the entire time of the employment relationship (which had only ended in 1998), the absolute limitation period had started to run only from the moment of the victim's last exposure to asbestos. The Federal Court concluded that – provided that no adequate protective measure had been taken for the entire duration of the employment relationship (which the court at the previous level of jurisdiction would have to re-examine) – the claims lodged by the victim's heirs had not become absolutely time-barred at the moment when the counterparty had declared its waiver of the statute of limitations (*Verjährungsverzicht* – that is to say the counterparty had declared that it would not make use of its right to invoke the statute of limitations).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE RIGHT OF ACCESS TO A COURT

46. The applicants complained that they had been denied access to a court, in breach of Article 6 § 1 of the Convention, which reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

47. The Government submitted that Article 6 of the Convention was not applicable to the present case, as limitation periods constituted substantive law under Swiss legislation.

48. The applicants insisted that the present case did not differ from the one examined in *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, 11 March 2014, and that there was therefore no reason to change the Court's practice. They submitted that neither the Federal Court nor the Government had denied that Swiss law in principle allowed claims to be lodged in respect of instances of unlawful bodily injury, and that the Government did not argue that these had been examined in the proceedings before the domestic courts.

49. The Court notes that in the case of *Howald Moor and Others* (cited above, § 67), it declared admissible very similar complaints to the present one. It sees no reason not to do so in the present case. It reiterates that Article 6 of the Convention applies to disputes of a "genuine and serious nature" concerning the existence of a right which can be said, at least on arguable grounds, to be recognised under domestic law, as well as to the scope or manner in which it is exercised. Where, at the outset of the proceedings, there was a serious and genuine dispute about the existence of such a right, the fact that the domestic courts concluded that the right did not exist does not remove, retrospectively, the arguability of the applicants' claim (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 87-89, ECHR 2001-V).

50. The Court concludes that the complaint is neither manifestly ill-founded nor inadmissible on any of the grounds listed in Article 35 of the Convention and must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

51. The applicants insisted that their right of access to a court had been violated on account of the absolute limitation period set out by the former (and the new) domestic legislation, given the long latency period that characterised asbestos-related illnesses. The impugned domestic judgments had systematically applied the provisions of that legislation without taking into account the circumstances of Marcel Jann – despite the fact that his case had concerned mesothelioma, which could often only be detected after a latency period of twenty-five or more years – at the earliest shortly before the onset of that illness.

52. The proceedings in respect of the present case had been limited to the question of the application of the statute of limitations. The argument that the case had become statute-barred had therefore constituted a procedural obstacle that had denied the complainants access to a court. The applicants' case had not been judged materially owing to that obstacle; consequently, their right of access to a court had been impaired. The applicants further pointed out that the Government had correctly not argued that there had been no legal basis under domestic legislation for claims for damages arising from the causing of unlawful bodily harm.

53. In the applicants' view, the Federal Court had disregarded the judgment in *Howald Moor and Others* (cited above). Furthermore, the Federal Court had noted that it had not amended its practice in cases of late-onset damage caused by exposure to asbestos. The applicants further took issue with the Federal Court's view that it "could not infer from the judgment in *Howald Moor and Others* (cited above) that absolute limitation periods – in the sense of a general substantive rule – should be excluded and that a claim lodged thirty-seven years after the [causing of] alleged damage should still be accepted [for examination]". They also referred to several articles published in the legal literature discussing different possible ways of interpreting domestic legislation, such as a different determination of the *dies a quo* or a suspension of the running of the limitation period under Article 134 § 1 (6) of the Code of Obligations (see paragraph 43 above).

54. The applicants maintained that the absolute limitation period did not pursue a legitimate purpose in cases involving damage caused by exposure to asbestos, as it rendered it impossible for victims to lodge claims after their becoming aware of such damage. They further questioned whether the restrictive nature of the statute of limitations was proportionate to the aim of protecting the debtor; they submitted that the Government had failed to recognise that the Court had never provided a maximum limitation period in any of its decisions, and that the Court was not concerned with specific time limits but rather with ensuring that people who had suffered bodily injury could have their claims examined by domestic courts. The applicants further reiterated that Marcel Jann had lodged his claim only a short time after he had become aware that he was suffering from an asbestos-related disease and about thirty-four years after his last exposure to asbestos. An absolute time limitation of ten years – and now twenty years following the above-mentioned legislative reform (see paragraph 31 above) – was generally disproportionate in view of the lateness of the onset of the damage suffered by asbestos victims.

55. As regards the EFA Foundation, the applicants submitted that the possibility for asbestos victims to claim benefits from it did not provide redress for the Convention violation; moreover, the Federal Court had never asserted that the benefits disbursed by the EFA Foundation constituted such redress. On the one hand, there was no legal or enforceable right to those benefits; on the other hand, the applicants would have to explicitly renounce their right to benefits under domestic law and to the judicial enforcement thereof. In any event, Marcel Jann's heirs would not be able to benefit from the EFA Foundation, as his illness had manifested itself before 2006. Moreover, the EFA Foundation did not offer a solution for any other person who had become ill before 2006. Once the circle of possible beneficiaries of the EFA Foundation had been enlarged by the inclusion of those persons in whose cases the disease manifested itself after 1996 (and not only after 2006 – see the changes adopted to the Compensation Regulations in March 2022 in paragraph 35 above), the applicants maintained that any possible benefits they might receive would be much lower than what they could claim under civil law. In addition, they would have to withdraw the claims that they had already lodged with the courts, which would mean that the legal costs they had incurred thus far would have been lost. In summary, they had no intention of applying to receive benefits from the EFA Foundation.

56. The applicants concluded that there were no differences between their case and that of *Howald Moor and Others* (cited above) that would justify a deviation from the Court's findings in the latter case. The applicants (and other similarly affected persons) had *de facto* been denied access to a court (in violation of Article 6 § 1 of the Convention) on account of the interpretation of the underlying provisions under which claims lodged by injured persons could become time-barred before the persons concerned could objectively have become aware of the damage that they had incurred.

(b) The Government

57. The Government denied that there had been an interference with the very essence of the applicants' right of access to a court in view of the in-depth analysis carried out by the domestic courts. The applicants had not been prevented from lodging their complaints at several levels of jurisdiction. The two cantonal courts had examined the arguments submitted by the applicants and

had concluded that their claims had become time-barred in view of the absolute statute of limitations. The Federal Court had also examined the question of limitation periods in the light of its own case-law and the relevant legal literature, as well as of the Convention and the Court's case-law – in particular the judgment that it had delivered in respect of the case of *Howald Moor and Others* (cited above). In sum, the Government, referring to *Markovic and Others v. Italy* ([GC], no. 1398/03, §§ 105 and 115, ECHR 2006-XIV), were of the opinion that the applicants had had access to a court – even though the examination of their case by the domestic courts had been limited by the fact that one of the substantive preconditions had not been met.

58. The Government also noted that in its judgment delivered in respect of the case of *Howald Moor and Others* (cited above, § 72, with further references) the Court had reiterated the legitimate aim of limitation periods. The legislature had taken into account that aim by prescribing the limitation periods set out in Articles 60 § 1 and 130 § 1 of the Code of Obligations (see paragraphs 38-39 above). The fact that in respect of illnesses with a long latency period a claim could become time-barred (under certain conditions) even before the injured person in question discovered that he or she was suffering from such an illness was ultimately inherent in a system in which national laws provided an absolute limitation period. Such absolute limitation periods were not excluded in the light of the Court's case-law.

59. As regards the question of proportionality, the Government referred to the Federal Court's judgment in the present case (see paragraphs 26-27 above) in which it had concluded that it was not disproportionate to consider as time-barred a claim that had not been lodged until some thirty-seven years after the last possible moment at which the harmful act in question had occurred. The Federal Court had taken into consideration the fact that in the present case, thirty-seven years had passed between the harmful act in question (the applicant's exposure to asbestos in 1972 at the latest) and the lodging of a claim in July 2009. That fact was also what set this case apart from that of *Howald Moor and Others* (cited above) in which twenty-seven years had passed between the end of the exposure of the applicant in that case to asbestos in 1978 and the lodging of a claim in 2005. Even the original legislative amendment proposed by the Federal Council of thirty years as the absolute limitation period (see paragraph 28 above) would not have sufficed for the instant case not to have been statute-barred, while (by contrast) it would have sufficed in the case *of Howald Moor and Others* (cited above). The Government further emphasised the fact that almost five years had elapsed between the discovery of the illness and the lodging of a claim and almost three years between Marcel Jann's death and the lodging of a claim – as opposed to only seventeen months in the case of *Howald Moor and Others* (cited above). Furthermore, in one case, the relative limitation period of three years would have been respected, whereas in the other it would not. Therefore, even with an absolute limitation period of forty years, the applicants' claim would still have been time-barred because it had been lodged more than three years after the discovery of the illness. Another difference between the present case and that of *Howald Moor and Others* (cited above) lay in the fact that Marcel Jann had never been exposed to asbestos in the course of his professional activities, unlike the victim in the case of *Howald Moor and Others* (cited above).

60. The Government also referred to another judgment of the Federal Court that had also been delivered on 6 November 2019 (see paragraph 45 above) in which that court had arrived at a

different conclusion after analysing the precise circumstances of that other case. In particular, the Federal Court had held in that case that – provided that no adequate protective measures had been taken for the entire duration of the employment relationship (a question that would have to be re-examined at the previous level of jurisdiction) – the claims in question had not become absolutely time-barred. The Government submitted that that clarification had therefore led to an extension of the absolute limitation period in that case (and in similar cases), which demonstrated that the Federal Court had examined in each case the proportionality of the application of limitation periods.

61. The Government furthermore noted the extension of the absolute limitation period to twenty years in the event of death or bodily injuries and the setting-up of the EFA Foundation (see paragraphs 31-34 above). When drawing up those solutions for asbestos victims, the legislature had carefully weighed the interests involved – that is, the interests of asbestos victims against (i) the interests of potential defendants in not being indefinitely faced with the possibility of complaints being lodged even after a very long time had elapsed and (ii) the interests of the public in legal certainty. The Government stated that the legislature enjoyed in this area a certain margin of appreciation. They stressed that the applicants had not tried to obtain compensation from the EFA Foundation on the basis of the "hardship clause" (see paragraph 34 above); nor had they tried to obtain compensation from the EFA Foundation on the basis of the circle of possible beneficiaries having been enlarged by the inclusion of those persons in whom the disease had become apparent only after 1996 (and not only after 2006 – see the changes made to the Compensation Regulations in March 2022 in paragraph 35 above). They also referred to the general measures taken in response to the Court's judgment in the case of *Howald Moor and Others* (cited above), on the basis of which the Committee of Ministers had ended its supervision of the execution of that judgment (see paragraph 37 above).

62. The Government considered that it was essential to bear in mind the fact that the system of social insurance in Switzerland already permitted the large-scale compensation of asbestos victims and their relatives. Furthermore, other possibilities to obtain reparation (including obtaining reparation from the EFA Foundation) should also be taken into account. Between 2017 and November 2021, the EFA Foundation had provided financial support in over 100 cases of mesothelioma, and over 150 persons had been helped and advised by its "Care-Service" (that is, a service providing those concerned and their families with advice and answers to questions). Over CHF 10,000,000 had been allocated. That demonstrated that it constituted a simple and rapid mechanism. The applicants had however deliberately omitted to lodge a request with the EFA Foundation.

63. Lastly, the Government maintained that the applicants' complaint was of a fourth-instance nature and that it was not the Court's task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors might have infringed rights and freedoms protected by the Convention.

2. The Court's assessment

(a) General principles established in the Court's case-law

64. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court – referring to the principles of the rule of law and the avoidance of the arbitrary exercise of power, which underlay much of the Convention – found that the right of access to a court constituted an inherent aspect of the safeguards enshrined in Article 6. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022, and *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018, with further references).

65. Furthermore, the right of access to a court must be "practical and effective", not "theoretical or illusory". This observation is particularly true in respect of the guarantees provided by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (ibid., § 77, with further references). For the right of access to a court to be effective, an individual must have a clear, practical opportunity to challenge an act that constitutes an interference with his or her rights (see *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B), or a clear, practical opportunity to claim compensation in a court (compare *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, §§ 74-76, 26 July 2011).

66. The Court reiterates that the access-to-court guarantees apply with the same degree of force to private disputes as they do to those involving the State. This is so because in both types of proceedings a party can be forced to bear a disproportionate financial burden in the form of covering the costs of the proceedings, which can ultimately result in a breach of that party's right of access to a court. At the same time, the fact that one party to a dispute is a private party forms but one element to be considered when assessing the proportionality of the restriction of the right of access to a court (see *Čolić v. Croatia*, no. 49083/18, § 53, 18 November 2021, with further references).

67. However, the right of access to the courts is not absolute and may be subject to limitations that do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Baka v. Hungary* [GC], no. 20261/12, § 120, 23 June 2016, with further references). For example, the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Zubac*, cited above, § 98, with further references).

68. As regards compensation for victims of bodily harm, the Court has held that the practical and effective nature of the right of access to a court may be impaired by limitation periods for lodging a claim (see, for example, *Howald Moor and Others*, cited above, §§ 79-80, and *Eşim v. Turkey*, no. 59601/09, §§ 25-26, 17 September 2013). In other words, the persons concerned should be entitled to take legal action where they were actually capable of evaluating the injury sustained, and making them subject to a limitation that expired before the date on which the injury was assessed might infringe their right to a tribunal (see *Sanofi Pasteur v. France*, no. 25137/16, § 53, 13 February 2020).

69. In the last-mentioned case that concerned a situation where one party's right under the Convention (the applicant company's right to legal certainty) came up against another party's Convention rights (namely, the victim's right to a tribunal), the Court held that the balancing of individual interests (which could well contradict each other) was a difficult matter and Contracting States must have a broad margin of appreciation in this respect. While it was not for the Court to interfere with the State's policy choices aimed at striking the said balance in the context of the statute-barring of actions for damages, it could not criticise the choice according to which the domestic legal system lent greater weight to the right of victims of bodily injuries to a tribunal than to the right to legal certainty of those responsible for those injuries. It reiterated in that connection the importance that the Convention attaches to the protection of physical integrity, which falls within the ambit of Articles 3 and 8 of the Convention (ibid., §§ 55-58).

70. Lastly, it is not the Court's task to express a view on whether the policy choices made by the Contracting Parties defining the limitations on the right of access to a court are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the Convention. Similarly, the Court's role is not to resolve disputes over the interpretation of domestic law regulating such access but rather to ascertain whether the effects of such an interpretation are compatible with the Convention (see *Zubac*, cited above, § 81, with further references). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, §§ 86 and 89, 29 November 2016, with further references).

(b) Application of these principles to the present case

(i) Factual circumstances of the present case in comparison with those in the case of Howald Moor and Others

71. The Court notes at the outset that the present case concerns the question of whether the applicants' right of access to a court was infringed by the domestic courts declaring their claims for compensation to be time-barred. The applicants asserted that there were no differences between this case and the case of *Howald Moor and Others* (cited above) – an assertion with which the Government disagreed. The Court will thus begin by comparing the factual circumstances of these two cases in the light of the parties' arguments.

72. The Government noted in particular that, unlike in the case of *Howald Moor and Others* (cited above), the victim in the present case had not been exposed to asbestos within a professional context; rather, the applicants alleged that he had been exposed by virtue of the fact that he had lived in the vicinity of the factory and train station where material containing asbestos had been processed (see paragraph 5 above). While this may hold true, the Court cannot draw any inferences in respect of

the applicants' Convention rights as to whether or not the cause of the victim's mesothelioma lay in his place of occupation. In fact, the victim in the case of *Howald Moor and Others* (cited above) received a number of payments under the accident-insurance system (ibid., § 12), while the victim in the present case never did, as he was not entitled to any such payments. In both cases, however, the victims' right to the protection of their physical integrity had been at stake.

73. By way of highlighting a further difference, the Government also noted that the victim in the case of *Howald Moor and Others* (cited above) had lodged his claim twenty-seven years after the end of the period during which he had been exposed to asbestos and seventeen months after being diagnosed with mesothelioma, while the victim's heirs in the present case had done so thirty-seven years after the end of the period during which the victim had allegedly been exposed to asbestos and five years after he had been diagnosed with mesothelioma (with almost three years elapsing between the victim's death and the lodging of the claim – see paragraph 59 above).

The Court cannot, however, overlook the fact that the victim in the present case first attempted to obtain redress by means other than bringing a civil action – namely, by lodging a criminal complaint with the investigating authority (see paragraph 9 above). He therefore took legal action (by lodging a criminal complaint) thirty-four years after the end of the period of his alleged exposure to asbestos and around two years after being diagnosed with mesothelioma. His heirs, in turn, lodged their claims one year after the final domestic decision dismissing his criminal complaint (see paragraphs 12-13 above). Be that as it may, the differences were only mentioned by the Government in their submissions but not by the Federal Court in its decision. It follows that the Federal Court itself did not deem the differences sufficiently pertinent so as to base its reasoning on them (see paragraphs 26-27 above).

74. The Court furthermore notes that the new absolute limitation period of twenty years is not applicable to the present case; moreover, the parties did not argue that the new limitation period was applicable. It is consequently questionable whether the differences between this case and the case of *Howald Moor and Others* (cited above) are indeed so significant as to justify different approaches to the question of access to court. Indeed, the Court is not convinced by the Government's arguments in this respect.

(ii) New developments in the form of the EFA Foundation and the applicants' choice not to apply to it

75. The Court reiterates that the question of the compliance by the High Contracting Parties with its judgments falls outside its jurisdiction if it is not raised within the context of the "infringement procedure" provided for under Article 46 §§ 4 and 5 of the Convention. Under Article 46 § 2, the Committee of Ministers is vested with the power to supervise the execution of the Court's judgments and to evaluate the measures taken by respondent States. However, the Committee of Ministers' role in the sphere of the execution of the Court's judgments does not prevent the Court from examining a fresh application concerning measures taken by a respondent State in the execution of a judgment if that application contains relevant new information relating to issues undecided by the initial judgment (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 33, ECHR 2015, with further references). This is the situation as regards the instant case – besides having been lodged by different applicants than those in the case

of *Howald Moor and Others* (cited above) and concerning a different asbestos victim, the present case also touches upon developments that had not been addressed by the Court in the case of *Howald Moor and Others* (cited above).

76. In this regard, the Court notes the creation of the EFA Foundation (see paragraph 33-34 above) in the context of execution of the judgment in *Howald Moor and Others* (cited above), which the Government claims to constitute a practical and non-bureaucratic means of ensuring that many of the persons concerned and/or their heirs can rapidly receive benefits. The Court furthermore notes that the circle of potential beneficiaries has recently been enlarged to include those persons whose mesothelioma manifested itself after 1996 instead of after 2006 (see paragraph 35 above). Nonetheless, while between 120 and 200 new cases of mesothelioma are registered in Switzerland every year (see the different figures mentioned in paragraph 36 above), the EFA Foundation has received an average of around sixty applications for benefits per year since its creation in 2017 (ibid.). It is not clear or known whether those who do not apply to the EFA Foundation do not do so because they are not eligible for benefits under its Compensation Regulations (see paragraphs 34-35 above), or whether they are eligible to compensation in other ways.

77. As regards the applicants in the present case, the Government seem to have indicated (see paragraphs 61-62 above) that they could and should have applied to the EFA Foundation for benefits. The Court notes, however, that at the time of lodging their application with the Court in January 2020, they did not belong to the circle of potential beneficiaries, as the symptoms of Marcel Jann's mesothelioma had appeared before 2006 (see paragraph 34 above). As there is no definition of what constitutes a "hardship situation" in the Compensation Regulations of the EFA Foundation (ibid.), it is not clear whether the applicants' situation could have fallen under the hardship clause. In any event, the applicants would also have had to withdraw their civil action – which was already pending before the domestic courts (ibid.) – and thus also bear the financial burden that the proceedings had imposed on them thus far. Furthermore, there does not seem to exist a right to obtain benefits, as an application lodged with the EFA Foundation constitutes a request made to a private-law foundation whose decisions cannot be appealed against before the courts (in the event, for example, that a request is refused). Moreover, one may only receive benefits from the EFA Foundation under the explicit condition that one renounces the possibility to lodge any claims in judicial proceedings (ibid.). Consequently, in the light of all this, the Court considers that the applicants cannot be reproached for not having opted to apply to receive benefits from the EFA Foundation. While the Court considers the creation of the EFA Foundation and the changes made in March 2022 to its Compensation Regulations (see paragraph 35 above) to be positive in principle, this does not change its conclusion in the present case in view of the above-mentioned legal conditions imposed on those seeking benefits by the Compensation Regulations.

(iii) The question of reasonable relationship of proportionality

78. Having compared the circumstances of the two cases, and reiterating that the aim of legal certainty pursued by statutes of limitations is a legitimate aim within the meaning of the Convention (see *Howald Moor and Others*, cited above, § 77), the Court will now turn to the question of whether a reasonable relationship of proportionality exists between the means employed and the aim sought (see *Baka*, cited above, § 120). The Court cannot agree with the arguments put forward by the

Government in this respect. It notes firstly that there does not seem to be a scientifically recognised maximum latency period between exposure to asbestos and the manifestation of asbestos-caused mesothelioma. According to the EFA Foundation, it can take forty-five or more years after exposure to asbestos for mesothelioma to manifest itself (see paragraph 36 above); the Federal Court noted that latency periods could last for between fifteen and forty-five years (see paragraph 44 above). It follows that it is scientifically clear and proven that the latency period for asbestos-related mesothelioma can be relatively short or very lengthy.

79. The Court has already held that when it is scientifically proven that it is impossible for a person to know that he or she suffers from a certain illness, such a circumstance should be taken into account in the calculation of the limitation period (see *Howald Moor and Others*, cited above, § 78). In view of the long latency periods involved (see paragraphs 36, 44 and 78 above), it is therefore safe to assume that asbestos-related claims will always be time-barred in the case of a ten-year limitation period, and probably also very often in the case of a twenty-year limitation period under the new domestic provisions (see paragraphs 31 and 41-42 above), if at the same time the beginning of the limitation period (*dies a quo*) is linked to the (end of the) harmful act in question. In other words, the persons concerned will not be entitled to take legal action at the point that they were actually capable of evaluating the injury sustained because the limitation period will have expired before the date on which the injury could have been assessed (see *Sanofi Pasteur*, cited above, § 53).

80. It is not the Court's task to assess the policy choices made by the States defining the limitations on the right of access to a court, its task being confined to determining whether their choices in this area produce consequences that are in conformity with the Convention (see *Zubac*, cited above, § 81). The Court notes that as a result of the determination of the *dies a quo* in the present case in line with the case-law of the Federal Court, the applicants did not have their claims for compensation examined materially. This would also be the case under the new statute of limitations if the same manner of determining the *dies a quo* is maintained. In fact, the question is not so much whether a ten-year or twenty-year or thirty-year or even longer absolute limitation period can, in theory, be in compliance with the Convention; rather, the determining issue is whether the application thereof – which involves the determination of the point in time at which a limitation period begins (*dies a quo*), as well as any possible suspension of the running of the limitation period – produces consequences that are in compliance with the Convention. The Court finds it significant that the legislature was well aware that amending the law alone could not solve the problem encountered in cases like the present one and that the domestic courts, first and foremost the Federal Court, would have to contribute to finding a solution in practice (see paragraph 32 above). It notes however that the Federal Court has explicitly held that it maintains its case-law as regards the interpretation of the limitation period and the manner of determining the *dies a quo* (see paragraphs 26 and 45 above).

81. Moreover, the Court reiterates that – as regards the requisite balancing exercise between the victim's right of access to the courts and the defendant's right to legal certainty (within the context of the statute-barring of actions for damages) – it could not criticise the choice according to which the domestic legal system lent greater weight to the right to a tribunal of victims of bodily injuries than to the right to legal certainty of those responsible for those injuries (see *Sanofi*

Pasteur, cited above, §§ 55-58). In the present case, a contrary situation applied – despite the fact that the victim could for a long time not even have known that he had suffered damage. The Court can therefore not agree that the applicants' right of access to a court has been practical and effective, in view of the manner of determining the *dies a quo* in respect of the running of the absolute limitation period. There does not seem to be a reasonable relationship of proportionality between the means employed and the aim sought. The domestic courts limited the applicants' right of access to a court in such a way that the very essence of their right has been impaired. It follows that the State overstepped its margin of appreciation (see paragraph 70 above). There is consequently no reason to depart from the Court's reasoning in the judgment that it delivered in respect of the case of *Howald Moor and Others* (cited above, §§ 74-80; see also paragraphs 73-74 above).

(iv) Conclusion

82. The foregoing considerations are sufficient to enable the Court to conclude that in the exceptional circumstances that pertain to victims of asbestos exposure (in this regard, see also *SAS IVECO FRANCE v. France* (dec.), no. 50018/17, §§ 33-44, 1 February 2022, where the Court accepted as Convention-compliant a specific evidentiary regime that applied to claims for compensation for anxiety-related harm caused to asbestos victims – notably the making of presumptions in favour of the asbestos victims that could be rebutted by demonstrating the existence of "grounds for exoneration from liability"), the application of the absolute limitation periods by the domestic courts – in particular the manner of determining the *dies a quo* in respect of the running of the absolute limitation period – resulted in the applicants' right of access to a court being restricted to the point that the very essence of that right had been impaired.

83. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

84. The applicants complained of the length of the domestic proceedings, which they considered excessive and therefore in breach of Article 6 § 1 of the Convention, which reads as follows.

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

85. The Government submitted that the complaint in respect of the length of the proceedings before the two cantonal courts was inadmissible for non-exhaustion of domestic remedies (see paragraph 91 below).

86. The applicants acknowledged that they had not complained before the Federal Court of the allegedly excessive length of time that each of the individual procedural steps taken by the cantonal courts had lasted; rather, in their submissions to the Court they had contested the efficiency of that remedy and had argued that this circumstance was nonetheless noteworthy when assessing the overall length of the proceedings (see paragraph 90 below).

87. The Court considers that the Government's objection raises issues that are closely linked to the merits of the applicants' complaint, as normally the whole of the proceedings in question must be taken into consideration (see *König v. Germany*, 28 June 1978, § 98 *in fine*, Series A no. 27). It therefore decides to join the objection to the examination on the merits. It furthermore notes that the complaint is neither manifestly ill-founded nor inadmissible on any of the grounds listed in Article 35 of the Convention and therefore declares it admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

88. The applicants complained of the allegedly excessive length of the domestic proceedings – notably those before the Federal Court. They noted that they themselves had requested a suspension of the proceedings before the Federal Court until an outcome was reached in the case of *Howald Moor and Others* (cited above) then pending before the Court, so as to avoid a negative decision being delivered by the Federal Court. However the Federal Court had ordered the suspension of the proceedings on 8 April 2014 – that is, only after the judgment in respect of *Howald Moor and Others* (cited above) had been delivered. Furthermore, at that time it had already been known that the draft legal provisions then being discussed in Parliament did not include any transitional provisions; in any event, such provisions would have been of no use to the applicants as a new absolute limitation period of a maximum thirty years had from the start of the legal process of reforming the statute of limitations been the length of time under discussion (see paragraph 28 above). The Federal Court had thus accepted that the proceedings would be delayed for several years; in the event, they had been delayed for more than four and a half years.

89. The applicants further emphasised that on 30 June 2014 they had lodged a request for the decision to suspend the proceedings to be reconsidered, and for the proceedings to be resumed (see paragraph 21 above). They had argued that new laws could not be applied retroactively and that awaiting the outcome of parliamentary discussions regarding a proposed legal reform – a process that often lasted years in Switzerland – constituted an inadmissible delay in proceedings that was contrary to the Convention and thereby constituted a denial of justice within the meaning of Article 6 § 1 of the Convention. Their request had, however, been refused on 3 July 2014 (see paragraph 22 above). Any further request that the proceedings be resumed would have been futile after that refusal. After the legislature had enacted the reform of the statute of limitation on 15 June 2018 (see paragraph 23 above), the applicants had again requested the resumption of proceedings on 31 August 2018 (see paragraph 24 above). The Federal Court had eventually resumed the proceedings on 6 November 2018 (see paragraph 25 above) – that is, almost five months after Parliament had enacted the new domestic provisions. The applicants also considered it untenable that the Federal Court had needed another seven months to reach a decision after the last submissions had been lodged by the parties – particularly given that there had been no change in the factual or legal situation compared to the judgment in *Howald Moor and Others* (cited above) (that is to say their situation had been exactly the same as that faced by the applicants in *Howald Moor and Others* – the same facts and the same laws had applied).

Furthermore, this had forced the applicants into lodging an application with the Court because the Federal Court had insisted on adhering to its own time-limit practice, even though that practice had been contrary to the Convention.

90. As regards the Government's objection (see paragraph 91 below) that the applicants had not lodged any complaint with the Federal Court regarding the length of each of the individual procedural steps taken by the cantonal courts, the applicants conceded that that was true; however, they considered the remedy provided by section 100(7) of the Federal Act on the Federal Court (see paragraph 40 above) to be ineffective, as domestic legislation and case-law did not provide that any sanction should be imposed in the event of unlawful dismissals of or delays in issuing a decision. Instead, the proceedings would remain suspended at the lower level of jurisdiction during the time that a complaint regarding an alleged unlawful dismissal of or delay in issuing a decision was being assessed. Furthermore, the fact that it had taken more than four years simply for the question regarding the statute of limitations to be examined by cantonal courts at two levels of jurisdiction meant that it could not be considered that this matter had been dealt with "within a reasonable time". That circumstance was noteworthy when assessing the overall length of the proceedings. The applicants lastly argued that the Court took into account in its case-law the overall length of the proceedings. Consequently, even though the length of each of the individual procedural stages had not been challenged, what was decisive for the assessment of the question of "reasonable time" within the meaning of Article 6 § 1 of the Convention was the overall length of the proceedings. The applicants concluded that this requirement had not been complied with in the present case.

(b) The Government

91. The Government argued that the applicants had not complained of the allegedly unreasonable length of the cantonal proceedings before the Federal Court, even though they could have done so under section 100(7) of the Federal Act on the Federal Court (see paragraph 40 above). Consequently, that part of their complaint was inadmissible before the Court for non-exhaustion of domestic remedies. The Government further considered that in any event, the fact that it had taken slightly more than four years for the question regarding the statute of limitations to be examined at two cantonal levels of jurisdiction could not be regarded as excessive.

92. As regards the length of proceedings before the Federal Court, the Government submitted that the period of one year between the resumption of the proceedings and the delivery of the final judgment had constituted a particularly short time, given the fact that there had been two exchanges of observations. Concerning the suspension of the proceedings, the Government stressed that it was the applicants themselves who, on 6 November 2013 (see paragraph 19 above), had requested that the proceedings be suspended until the delivery of a decision by the Court in the case of *Howald Moor and Others* (cited above). On 11 March 2014 the Court had delivered its judgment in the latter case. Subsequently the Federal Court had decided on 8 April 2014 that it was reasonable to await the legal reform of the statute of limitations which had then been pending in Parliament (see paragraph 20 above). The applicants' request of 30 June 2014 that the suspension of the proceedings be reconsidered had been refused by the Federal Court on 3 July 2014 (see paragraphs 21-22 above). After that date the applicants had not undertaken any further steps with a view to having the suspension of the proceedings lifted, even though they could have done so at any time. It had only

been on 31 August 2018 (after the conclusion of the parliamentary debates regarding the proposed amendment to the statute of limitations) that the applicants had again requested that the proceedings be resumed (see paragraph 24 above). The four defendants had then been able to submit their positions regarding the applicants' request (on 20, 24 and 25 September and 15 October 2018, respectively), arguing that the suspension of the proceedings should continue until the entry into force of the new legal provisions (ibid.). The proceedings had eventually been resumed on 6 November 2018 on the grounds that the reasons for the suspension were no longer valid (see paragraph 25 above). It followed that – contrary to the applicants' assertions – the Federal Court had reacted immediately after being appraised by the four defendants of their respective positions.

93. In the Government's view, the then on-going legal reform had potentially been decisive for the outcome of the present case – notably as regards the room for manoeuvre available to the Federal Court in its interpretation of the applicable limitation period. Moreover, until the end of the outcome of the above-mentioned parliamentary discussions regarding a proposed legal reform, it had not been possible to predict whether Parliament would include transitional provisions that would cover those falling under the old statute of limitations and if so, in what form. Furthermore, the fact that the EFA Foundation had been set up had also been decisive for the suspension. The suspension of the proceedings had, at that time, potentially been in the interests of the applicants, as the Federal Court could have simply rejected their complaints as time-barred under the law as then in force. It had, however, not been completely excluded that Parliament would provide an exception to the principle of non-retroactivity that would have benefitted the applicants.

94. Lastly, the Government noted that the applicants had lodged purely financial claims on behalf of the deceased Marcel Jann. Given what had been at stake for them, the instant case therefore differed from others in which the Court had found that the suspension of proceedings had not been justified under the specific circumstances of those cases (see *König*, cited above, §§ 110-111), or in which the Court had found that the suspension of the proceedings had been excessively lengthy (see *Rezette v. Luxembourg*, no. 73983/01, § 32, 13 July 2004). The Government concluded that the present case had been particularly complex, with four different defendants – all of whom had been represented by different lawyers. Apart from the suspension of the proceedings before the Federal Court, there had not been any inactive phase during the domestic court proceedings. In the light of all the relevant criteria, the overall length of the proceedings over three levels of jurisdiction – from the introduction of the complaint on 6 July 2009 until the Federal Court's ruling of 6 November 2019 – appeared reasonable.

2. The Court's assessment

(a) General principles established in the Court's case-law

95. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and in accordance with the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant in the dispute (see, among many others, *Lupeni Greek Catholic Parish and Others*, cited

above, § 143). Long periods during which the proceedings stagnate without explanations can be in breach of Article 6 § 1 of the Convention (see *Beaumartin v. France*, 24 November 1994, § 33, Series A no. 296-B). The person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings. He is under no duty to take action that is not apt for that purpose (see *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, § 35, Series A no.157).

96. In civil proceedings, the "reasonable time" referred to in Article 6 § 1 of the Convention normally begins to run from the moment at which proceedings were instituted before the relevant court (see *Bock v. Germany*, 29 March 1989, § 35, Series A no. 150, and *Poiss v. Austria*, 23 April 1987, § 50, Series A no. 117). As to when the period in question ends, it normally covers the whole of the proceedings in question – including appeal proceedings (see *König*, cited above, § 98 *in fine*) and extends right up to the decision which disposes of the dispute (see *Poiss*, cited above, § 50).

(b) Application of these principles to the present case

97. The Court notes at the outset that the applicants in essence complained of the allegedly excessive length of the proceedings before the Federal Court – most notably the protracted suspension thereof, rather than the length of the proceedings before the cantonal courts (which they nevertheless considered noteworthy when assessing the overall length of the proceedings). The Government on the other hand considered the suspension of the proceedings before the Federal Court to have been justified and the length of the proceedings before it reasonable, although they also conceded that there had been a phase of inactivity on the part of the Federal Court. They further argued that the case had been particularly complex and that only claims of a pecuniary nature had been at stake for the heirs of the deceased.

98. As regards the period to be taken into consideration, the Court notes that it began on 16 July 2009 (when the applicants brought proceedings before the Glarus Cantonal Court – see paragraph 14 above) and ended on 6 November 2019 (when the Federal Court issued its decision regarding the applicants' claims – see paragraph 26 above). It therefore lasted ten years and almost four months, over three levels of jurisdiction. The Court furthermore notes in this regard that the period of the proceedings that took place before the highest domestic court began on 6 November 2013 (when the applicants appealed to the Federal Court – see paragraph 19 above) and ended on 6 November 2019 (with the delivery of the latter's decision). The proceedings before the Federal Court thus lasted exactly six years.

99. As regards the reasonableness of the length of the proceedings, the Court can agree with the Government that the case was somewhat complex. It can further agree that, besides the suspension of the proceedings before the Federal Court from 8 April 2014 until 6 November 2018 (see paragraphs 20-25 above), no other real phase of judicial inactivity can be detected from the material in the case-file, and nor has any such inactivity been indicated by the applicants. The question therefore arises whether the suspension for a period of four years and almost seven months was in compliance with the requirement that cases be heard within a "reasonable time" within the meaning of Article 6 § 1 of the Convention. For the below-stated reasons, the Court considers that – simply taken alone – the proceedings before the Federal Court in themselves did not comply with the standards set out under Article 6 § 1 of the Convention. It follows that even if the applicants had

availed themselves of the above-noted remedy under section 100(7) of the Federal Act on the Federal Court (see paragraph 40 above) in respect of the proceedings before the cantonal courts, the length of the proceedings before the Federal Court would still have been excessive. In view of this conclusion, there is no need to examine the Government's non-exhaustion objection in relation to the proceedings before the cantonal courts (see paragraphs 85 and 91 above).

100. While the Government argued that the applicants had requested the resumption of the proceedings only once and that they could have lodged another request to this end at any time but that they had not done so (see paragraph 92 above), the Court notes that it is the duty of the State to ensure that proceedings are conducted within a reasonable time (see, *mutatis mutandis*, *Mincheva v. Bulgaria*, no. 21558/03, § 68, 2 September 2010, within the context of delaying tactics used by one of the parties). Similarly, even in legal systems that apply the principle that the procedural initiative lies with the parties, the parties' attitude does not dispense the courts from the duty of ensuring that any trial is conducted expeditiously, as required by Article 6 § 1 of the Convention (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII, with further references). It was consequently incumbent on the Federal Court to ensure compliance with this obligation. However, the Federal Court made it very clear that it would await the outcome of the legislative reform then being discussed in Parliament before deciding on the present case (see paragraphs 20 and 22 above). The applicants can therefore not be reproached with the fact that they did not lodge any further requests for the proceedings to be resumed while the legal reform was still under discussion in Parliament, as they could reasonably assume that another such request would be futile (see, *mutatis mutandis*, *Unión Alimentaria Sanders S.A.*, cited above, § 35, which reiterated the principle that the person concerned is under no duty to take action that is not apt for the purpose of shortening the proceedings).

101. The Court is mindful of the explanations submitted by the Government for the lengthy suspension of the proceedings before the Federal Court (see paragraph 93 above). It is, however, unable to agree that it was indeed necessary to wait for the outcome of the above-mentioned parliamentary discussions before resuming the proceedings; for the Court to indicate that it was indeed necessary would be to suggest that such a wait will be necessary every time a claim is lodged that concerns an area of law in respect of which Parliament is considering proposals for legislative amendments. The additional argument put forward by the Government that the EFA Foundation had been in the process of being formed at the same time (see paragraph 93 above) is not convincing either, as this development occurred only after February 2015 (when the round table took place – see paragraph 33 above), while the applicants had already requested in June 2014 that the decision to suspend the proceedings be reconsidered (see paragraph 21 above) – a request that the Federal Court had refused in July 2014 (see paragraph 22 above). Even if one were to take into account the proposal of the Legal Affairs Committee of the National Council for the creation of a special compensation fund for asbestos victims whose claims were time-barred, that proposal was only made in August 2014 (see paragraph 29 above) – that is, after the Federal Court had refused the applicants' request that the decision to suspend the proceedings be reconsidered. The EFA Foundation was not mentioned by the Federal Court in its decision of April 2014 to suspend the proceedings (see paragraph 20 above); nor did the Federal Court mention the EFA Foundation in its decision of July 2014 refusing the applicants' request that the

decision to suspend the proceedings be reconsidered (see paragraph 22 above). Indeed, it could not have been referred to in those decisions, as the EFA Foundation was only created in 2017.

102. The foregoing considerations are sufficient to enable the Court to conclude that despite the fact that the case is marked by a certain degree of complexity, the State did not comply with its duty to ensure that the proceedings before the Federal Court were conducted within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 44, ECHR 2000-VII, concerning a delay of nearly six years between the matter in question being referred to the French *Conseil d'Etat* and the delivery of its judgment; see also *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 22, ECHR 2000-IV, which concerned delays on the part of the judicial authorities of one year and seven months and of four years and eight months). It is consequently not necessary to examine whether what was at stake for the applicants required a particular degree of expedition.

103. There has accordingly been a violation of Article 6 § 1 of the Convention on account of the length of proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

105. The applicants claimed CHF 90,000 (approximately 94,300 euros (EUR)) in respect of pecuniary damage. They maintained that even if their demands were to prevail regarding the question of the statute of limitations, they would still have suffered damage amounting to approximately that sum, which comprised CHF 85,545 for their lawyer's fees in respect of the domestic proceedings (around two hundred and fifty hours of work in respect of the civil litigation) and CHF 4,585 for the loss of the interest that they would have realised on the capital that they had advanced to cover court costs. The applicants further claimed CHF 50,000 (approximately EUR 52,400) in respect of non-pecuniary damage, which had been caused mainly by the denial of justice from which they had suffered for years and by their having been confronted time and again with the memory of the painful fate of their late husband and father.

106. The Government did not discern any causal link between a possible finding of a violation and the loss of the interest that they would have realised on the capital that they had advanced to cover court costs (in the amount of CHF 4,585). They further considered that the finding of a violation of Article 6 § 1 of the Convention constituted sufficient redress in respect of non-pecuniary damage. Should the Court nonetheless make an award in this respect, the Government, referring to *Howald Moor and Others* (cited above, § 87), considered that a maximum award of CHF 15,000 jointly to the applicants would be appropriate in respect of non-pecuniary damages.

107. The Court will consider the amount of CHF 85,545 claimed by the applicants for their lawyer's fees in respect of the domestic proceedings under the heading of "costs and expenses" (see paragraphs 108-110 below), in line with its usual practice. As regards the remaining amount of CHF

4,585 claimed in respect of pecuniary damage, it does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicants jointly EUR 20,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

108. In addition to their claim of CHF 85,545 for the costs and expenses incurred before the domestic courts (see paragraph 105 above), the applicants also claimed a total of CHF 57,563 (approximately EUR 59,520) for the costs and expenses incurred before the Court. They noted that their lawyer had spent a total of 157.2 hours at an hourly rate of CHF 340 (without VAT) on the submissions before the Court, including sixteen hours of translation by another lawyer. Furthermore, the applicants submitted that Zurich-based lawyers usually charged between CHF 280 and CHF 400 per hour or more for work on matters of a similar degree of complexity and corresponding importance.

109. The Government submitted that the translation costs had not necessarily been incurred and that, furthermore, the amounts claimed in respect of costs and expenses for the proceedings before the domestic courts and for those before the Court were manifestly excessive. They argued that the applicants had not provided any document justifying the amount claimed regarding the domestic proceedings and that no award was therefore due in this respect. In any event, the arguments submitted to courts at three levels of jurisdiction were essentially the same; thus, an amount of CHF 3,000 seemed appropriate should the Court nonetheless make an award under this heading. As regards the costs and expenses claimed in respect of the proceedings before the Court, the Government, referring to *Howald Moor and Others* (cited above, § 91), considered the amount of CHF 5,000 to be appropriate.

110. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 14,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of access to a court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessively lengthy domestic proceedings;
4. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention,

the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 20,800 (twenty thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 14,000 (fourteen thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

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[1] See *Amtliches Bulletin des Ständerates* (Amt.Bull. S 2015 1286 et seq., notably pages 1291-92).

[2] See https://www.stiftung-efa.ch, last accessed on 26 September 2023.

[3] The EFA Foundation states this annual figure on its website by reference to the statistics of the National Agency for Cancer Registration (*Nationale Krebsregistrierungsstelle*) and the Centralisation Service for Statistics of the Accident Insurance (*Sammelstelle für die Statistik der Unfallversicherung*, SSUV).