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Cordelia Christiane Bähr*

KlimaSeniorinnen Judgment: Human rights obligation of Switzerland to quantify its fair share of the remaining global carbon budget

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* The author of this article served as lead counsel in the proceedings that led to the judgment discussed here in the case of Verein KlimaSeniorinnen Schweiz and others v. Switzerland.

Summary

The decision of the Grand Chamber of the European Court of Human Rights (ECtHR) of 9 April 2024 in the matter of the *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*[1] received unprecedented attention – not only from the media and the political sphere, but also from the legal profession. Nevertheless, the human rights-based requirements for state climate protection efforts which flow from Article 8 of the European Convention on Human Rights and are set out in the judgment have thus far scarcely been analysed in any depth.

The goal of this article is to facilitate a better understanding of the requirements formulated in the judgment. To that end, it places them in the context of the proceedings before the ECtHR and the judicial application of those requirements to Swiss climate policy.

The following conclusions may be drawn: The judgment establishes the obligation of states to determine a fair national carbon budget vis-à-vis the remaining global carbon budget in order to comply with the 1.5 °C limit. Based on a national carbon budget of this kind, climate legislation compatible with that budget must be devised and enacted. The importance of these two obligations – both in general and for Switzerland – cannot be underestimated. Experts have shown: With its current climate strategy, Switzerland will far exceed its national carbon budget, even when calculated on the basis of the most generous assumptions. Switzerland had already exhausted a carbon budget that takes account of Switzerland's responsibility and capabilities by 1999.

I. Starting point: Human rights requirements for state climate protection stemming from the "right to private and family life" (Article 8 ECHR)

In a ground-breaking decision which drew broad attention, on 9 April 2024, the Grand Chamber of the European Court of Human Rights (ECtHR) ruled in the case of *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*.[2] The Court stated: Article 8 of the European Convention on Human Rights (ECHR)[3] enshrines the right of individuals to effective state protection against the serious adverse effects of climate change on their life, health, well-being and quality of life (§§ 519, 544). A State must do its part to ensure such protection (§ 545). The measures of a State must be aimed at preventing an increase in the global average temperature beyond a level that has serious and irreversible negative effects on human rights (§ 546). The relevant temperature target is to limit global warming to 1.5 °C (§§ 106, 436, 546).[4]

In other words: It is the human rights obligation of a state to do its part to limit global warming to a maximum of 1.5 °C.

This is mainly a question of states carefully devising and enacting binding

1 ECHR, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* [GC] of 9 April 2024, case no. 53600/20 (KlimaSeniorinnen).

2 ECHR, *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* [GC] of 9 April 2024, case no. 53600/20 (KlimaSeniorinnen).

3 Convention for the Protection of Human Rights and Fundamental Freedoms of 5 November 1950 (SR 0.101).

4 DENNIS VAN BERKEL / FLORIS TAN / JOE UDELL / APRIL WILLIAMSON, Climate Litigation Network, The Human Rights Obligation to Quantify a Fair Share 1.5°C-Aligned Carbon Budget: A Close Analysis of the KlimaSeniorinnen Judgment, 16 January 2025, https://hudoc.exec. coe.int/?i=DH-DD(2025)100E.

regulations. The binding measures must be *effectively capable* of mitigating the existing and potentially irreversible future effects of climate change (§ 545). In order for this to be actually feasible and to avoid a disproportionate burden on future generations as far as possible, immediate action must be taken and appropriate intermediate goals must be set for the period leading to net neutrality (§ 549). The development of the domestic regulatory framework must be based on a national carbon budget (§§ 116, 550 and 571 et seq.). In addition, emissions generated through the import of goods and their consumption must be taken into account (§ 280 and Judge Eicke, Partly Concurring Partly Dissenting Opinion, § 4). Finally, the rules must also be effectively applied and implemented in practice (§§ 545 and 549).

In § 550, the court developed a series of specific human rights requirements for the development and implementation of a national climate policy. Compliance with these requirements will be examined by the ECtHR. The competent national authorities, whether legislative, executive or judicial, must:

a) adopt general measures specifying a target timeline for achieving carbon neutrality and quantify future greenhouse gas (GHG) emissions over the same period using a national carbon budget or other equivalent methodology, in line with the overarching goal for national and/or global climate-change mitigation commitments;

b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;

c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see points (a) and (b));

d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence;

e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

These obligations, including the obligation to quantify national GHG emission limits by means of a carbon budget or equivalent methodology (§ 550 (a)), are *human rights obligations* flowing from Article 8 ECHR. These obligations exist independently of the requirements of the United Nations Framework Convention on Climate Change (UNFCCC)[5] and the Paris Agreement[6]. As the ECtHR has expressly held, contrary to the view advocated by Switzerland (§§ 360 and 570 et seq.), they cannot be fulfilled solely by relying on nationally determined contributions (NDCs) under the Paris Agreement (§ 571).

Effective state protection of the individual also requires that mitigation measures be supplemented by adaptation measures. Account must be taken of any relevant particular needs for protection (§ 552). In addition, Article 8 ECHR contains various procedural guarantees. This includes making relevant information available, providing access to the conclusions of relevant studies and involving the public in the decision-making process (§§ 553 et seq.).

Switzerland has violated its duty of protection towards the association

5 United Nations Framework Convention on Climate Change of 9 May 1992 (SR 0.814.01).

6 Paris Agreement of 12 December 2015 (SR 0.814.012).

KlimaSeniorinnen Schweiz (and indirectly also towards its members) laid down in Article 8 ECHR. The Swiss authorities failed to act in good time and in an appropriate and consistent manner when devising and implementing climate legislation (§ 573). The ECHR identified critical lacunae in the process of creating national climate legislation, including the failure to quantify national GHG emission limits through a carbon budget or its equivalent (§§ 558-573). In addition, the 2020 emission reduction target was – as acknowledged by Switzerland – insufficient and was also missed (§§ 558 et seq.). Indeed, the Federal Council itself stated that industrialized countries (such as Switzerland) should have reduced their emissions by 25–40% by 2020 compared to 1990, even just to meet the (now obsolete) target of limiting global warming to 2 °C (§ 558).

II. The human rights obligation to establish a fair and 1.5°C compatible national carbon budget and to devise and enact climate legislation compatible with the national carbon budget

To date, in politics, administration, and academic literature, the human rights obligations arising from Article 8 ECHR — as defined in the judgment concerning the state's climate protection efforts — have often either remained unexplored, been underestimated, treated as fulfilled, or dismissed as merely procedural.

For a better understanding, in particular, of the requirements for quantifying national GHG emission limits defined in § 550(a) of the judgment, it appears essential to set them in the – little-known – context of the proceedings before the ECtHR. Equally necessary and illuminating is the Court's application of these requirements to Swiss climate policy (§§ 558 et seq.).

1. Proceedings before the ECtHR

In its appeal to the ECtHR in November 2020, the association KlimaSeniorinnen Schweiz had already calculated a carbon budget for Switzerland and demonstrated that it will be exhausted quickly.[7] In its submissions to the Third Chamber of the ECtHR in October 2021 and to the Grand Chamber of the ECtHR in December 2022, it also stated the following: Even if one were to assume a right to equal emissions per capita from 2020, with today's climate strategy, the Swiss population would have used up their share of the remaining global budget within about a decade (§§ 77 and 569).[8]

However, the association KlimaSeniorinnen Schweiz also stated: Such a simple per capita distribution of the remaining global budget from 2020 onwards is not a valid approach to determine national fair shares in global climate protection efforts. Instead, a fair contribution must reflect the principles of "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (CBDRRC-

7 *Verein KlimaSeniorinnen and Others v. Switzerland*, Appeal of 26 November 2021, Additional Submission, para. 30, https://www.klimaseniorinnen.ch/wp-content/uploads/2020/11/201126_Application_ECtHR_KlimaSeniorinnen_extract_anonymised-2.pdf.

8 *Verein KlimaSeniorinnen and Others v. Switzerland*, Observations on the Facts dated 13 October 2021 (Observations on the Facts), para. 55, https://www.klimaseniorinnen.ch/wp-content/uploads/2021/11/53600_20_Observations_on_Facts_and_Reply.pdf; Verein KlimaSeniorinnen and Others v. Switzerland [GC], Observations on the facts, admissibility and the merits of 2 December 2022 (Observations on the facts, admissibility and the merits), para. 38, https://www.klimaseniorinnen.ch/wp-content/uploads/2022/12/221202_53600_20_Observations_GC_Klima-Seniorinnen_and_others_v_Switzerland.pdf.

NC), as well as equity (Arts. 2(2), 4(1) and 4(3) of the Paris Climate Agreement).[9] This is a point that Switzerland also acknowledges[10], but has not implemented in practice. In October 2021 and December 2022, the association KlimaSeniorinnen Schweiz submitted several recent scientific studies to the ECtHR that quantified Switzerland's fair share – not by means of a carbon budget, but in another, equivalent way, namely through fair, 1.5 °C-compatible emission reduction pathways (§ 78).[11] These studies formed the basis of the requests submitted by the Verein KlimaSeniorinnen Schweiz (§ 304), in particular: A reduction in greenhouse gas emissions to net negative by 2030 (to be achieved by measures in Switzerland and abroad), with reductions of 160% and up to 200% by 2030 compared to 1990 levels.[12]

Until shortly prior to the hearing before the Grand Chamber of the ECtHR in March 2023, Switzerland did not specifically respond to these submissions and studies. Eventually, the ECtHR explicitly invited Switzerland to submit a response. The Court's questions already anticipated what would later be decided: That states must base their climate strategies on a fair carbon budget. The questions put by the ECtHR to the parties also reflect its considerations as to how a national carbon budget is to be calculated, a point that was not made explicit in the judgment, presumably because it was deemed self-evident. In particular, that the national carbon budget must be in line with the remaining global carbon budget:

> "1. If the scientific premise of the [...] IPCC is accepted that [...] humanity needs to remain within a global GHG/carbon budget [...] and that consequently such an overall budget would need to be converted into respective national carbon budgets: (a) Has the respondent State adopted an overall national carbon budget for the period leading to net neutrality; and if so, on what basis has such a budget been calculated? (b) How should each State party's "fair share" be assessed in terms of the national carbon budget [...]? In this connection, what is the position of the respondent Government as regards the calculation of the "fair share" carbon budget set out in paragraphs 37-44 of the applicants' memorial of 2 December 2022?"[13]

Switzerland explained in its written reply to these questions that its NDC, which envisages

9 Observations on the Facts (footnote 8), para. 56 et seq.; Observations on the facts, admissibility and the merits (footnote 8), margin no. 39 et seq.

10 See Switzerland's information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 of its updated and enhanced NDC under the Paris Agreement (2021-2030), 9 December 2020, p. 13 f., https://www.bafu.admin.ch/bafu/de/home/themen/klima/fachinformationen/klima--internationales/eingaben-der-schweiz-im-rahmen-der-internationalen-klimaverhandl/eingaben-der-schweiz-im-rahmen-der-internationalen-klimaverhandl-unfccc-2020.html; Switzerland's Second Nationally Determined Contribution 2031–2035, 29 January 2025, p. 19, https://www.bafu.admin.ch/bafu/de/home/themen/klima/fachinformationen/klima-internationales/eingaben-der-schweiz-im-rahmen-der-internationalen-klimaverhandl/ eingaben-der-schweiz-im-rahmen-der-internationalen-klimaverhandlung-unfccc-2025.html.

11 Observations on the facts (footnote 8), para. 59 et seq., Observations on the facts, admissibility and the merits (footnote 8), para. 1.10.2.

12 *Verein KlimaSeniorinnen and Others v. Switzerland*, Observations on the Law of 13 October 2021, p. 82, https://www.klimaseniorinnen.ch/wp-content/uploads/2021/11/53600_20_Observations_on_ Law_and_Reply.pdf; Observations on the facts, admissibility and the merits (footnote 8), section 3.

13 *Verein KlimaSeniorinnen and Others v. Switzerland* [GC], Questions to the Parties of 16 March 2023, https://ainees-climat.ch/wp-content/uploads/2023/04/53600_20_Questions_to_the_parties_to_be_addressed_in_their_oral_submissions_at_the_hearing_before_the_Grand_Chamber.pdf. [as published by the ECtHR]

a reduction of greenhouse gas emissions by at least 50% by 2030 and achieving net zero by 2050, aims to keep the global temperature increase below 1.5 °C. It also stated that the climate targets set out therein were determined with reference to principles and indicators such as responsibility, capability, Switzerland's low share of global emissions and the high costs of mitigation (§§ 357 and 360). Switzerland further stated that there is no agreed methodology for determining climate targets (§ 360), which is why the quantification of a fair share is subjective (§ 359). It could therefore not be required to provide a quantitative justification for the fairness of its emission reduction targets (§ 360). Nevertheless, it stated that its national climate policy "could be considered as being close to an approach of establishing a carbon budget" (§ 360)[14], since it is possible to determine how much would still be emitted under the planned climate strategy until net zero is reached.

2. The Judgment of the ECtHR

The ECtHR did not accept these arguments advanced by Switzerland. Calculating the cumulative emissions associated with the planned climate policy cannot be regarded as a valid approach to establishing a national carbon budget (§§ 360 and 570). Switzerland failed to quantify a national carbon budget, which constitutes a "critical lacuna" in the drafting of climate legislation and constitutes a violation of Article 8 of the Convention (§ 573). Without quantifying national greenhouse gas emissions through a carbon budget or otherwise, no effective regulatory framework for climate protection can be put in place (§§ 570 and 550(a)). Furthermore, a reference to the NDC is not a substitute for quantifying a national carbon budget (§ 571).

In other words: Calculating the cumulative emissions associated with a particular climate strategy is not the same as a national carbon budget. What may sound complicated is really just a matter of common sense. It must be clear, even to a child: Whether I *want* to buy a toy that costs CHF 100 is not the same as asking whether I *can* actually afford the CHF 100, in light of the contents of my piggy bank. A carbon budget must form the basis of a climate strategy. Only on that basis can the climate strategy be developed in the first place. The quantification of national emissions through a carbon budget must also always be carried out in relation to the remaining global, 1.5 °C-compatible carbon budget. The national carbon budget must therefore be compatible with the remaining global carbon budget. This also follows, not least, from the fact that the protection of human rights depends on effectively limiting global warming – and thus on compliance with the remaining global carbon budget – (§ 546) and that state measures must be effectively capable of mitigating the existing and potentially irreversible future effects of climate change (§ 545, see also above).[15]

The ECtHR also makes clear that it is possible to calculate national carbon budgets vis-à-vis the remaining global carbon budget. The allocation of the remaining global carbon budget must be based, *inter alia*, on the principle of common but differentiated responsibilities under the UNFCCC and the Paris Climate Agreement (§§ 571, 254, 215–229). This principle requires states to act on the basis of equity and in accordance with their own respective capabilities (§ 571). The global carbon budget can and must therefore be allocated using fairness principles – or, to put it another way, *national carbon budgets must be calculated in such a way that they represent a fair share of the remaining global carbon budget.*[16]

Despite the narrow margin of appreciation afforded to states in setting climate

14 Verein KlimaSeniorinnen and Others v. Switzerland [GC], reply to the questions posed by the Court of 29 March 2023, https://www.klimaseniorinnen.ch/wp-content/uploads/2023/04/230329_written-submission-Switzerland.pdf.

15 VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 3.1.

16 See, in particular VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 3.3.

targets (§ 543):[17] The ECtHR leaves it to the states to determine how exactly or according to which methodology (see below) a national carbon budget is to be calculated – under the supervision and with the support of the Committee of Ministers of the Council of Europe (§ 657) – provided that it is fair and compatible with the 1.5 °C limit. The ECtHR also suggests that the minimum standard of fairness must go beyond a purely "equal emissions per capita" approach. With regard to the violation of Article 8 of the Convention, it considers that Switzerland's current climate strategy should allow more GHG emissions than "even an equal per capita emissions quantification approach would entitle it to use" (§ 569).

In this regard, finally, it is necessary to dispel the frequently encountered misunderstanding that a climate policy which envisages net zero by 2050 already satisfies the requirements of the judgment. The ECtHR does note that each contracting state must take measures for the substantial and progressive reduction of their respective GHG emission levels with a view to "reaching net neutrality within, in principle, the next three decades" (§ 548). However, this objective does not relate to individual states and their climate targets, but expressly applies only "in principle" (§ 548). § 548 must therefore refer to the global average reduction pathway modelled by the United Nations Intergovernmental Panel on Climate Change (IPCC) for limiting global warming to 1.5 °C, according to which net zero CO_2 emissions are to be achieved globally (and thus "in principle") by 2050 (see explicitly §§ 108, 113, 116). The fact that a net zero target by 2050, or a reduction pathway aligned with this global average, is not in itself sufficient to meet the human rights requirements of the judgment is already evident from the fact that Switzerland has adopted such a climate strategy and nonetheless violated Article 8 of the ECHR.[18] In addition, the global average reduction pathways modelled by the IPCC are explicitly not fair reduction pathways; they do not account for states' respective responsibilities or capabilities.[19] Any other reading of § 548 would nullify the human rights obligation – placed at the core of the Court's reasoning – to determine a fair national carbon budget.

In summary, the following can be stated: It is not the climate strategy that determines a national carbon budget, but rather the national carbon budget must determine the climate strategy. The national carbon budget must be determined in relation to the globally remaining carbon budget for limiting global warming to 1.5 °C, and it serves as the basis for the national climate strategy. When calculating the national carbon budget or quantifying national GHG emission limits, the principles of fairness agreed upon by the states under the Paris Agreement and the UN Framework Convention on Climate Change must be taken into account.

3. Supervision of the execution of the judgement by the Committee of Ministers of the Council of Europe

The Committee of Ministers of the Council of Europe supervises the execution of the judgment by Switzerland (Art. 46(2) ECHR). Notwithstanding the fact that the ECtHR had rejected Switzerland's arguments, Switzerland nonetheless repeated them before the Committee of Ministers. It made clear that it was not prepared to review its climate targets and, before the Committee of Ministers, presented the planned emissions from 2020 onward under the — as shown — incorrect heading of "carbon budget," amounting to 660 million tonnes of CO_2 equivalents.[20]

17 VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 2.

18 VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 3.3.4.

19 VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 3.3.4.

20 FDJP, Action Report for the attention of the Committee of Ministers of the Council of Europe dated 27 September 2024, https://hudoc.exec.coe.int/?i=DH-DD(2024)1123F. This figure is based

The Committee of Ministers rejected Switzerland's request to consider the execution of the judgment completed and to close the supervision. It invited Switzerland to demonstrate that its climate policy was based on a national carbon budget and was calculated using a methodology that responds to the Convention requirements as detailed by the Court:

> «... it would assist the Committee to further explain the methodology used, in order to demonstrate that it responds to the Convention requirements as set out by the Court, in particular that the relevant legislative and administrative framework is being ‹devis(ed), develop(ed) and implement(ed)› in an ‹appropriate and consistent manner› (see the test described by the Court in para. 550), relying on a quantification, through a carbon budget or otherwise, of national greenhouse gas emissions limitations. It would be particularly interesting to receive information on the following points: is the roadmap for reducing greenhouse gas emissions firmly rooted in a quantification of national greenhouse gas emissions limitations; and what is the process to update the targets with due diligence, and to monitor compliance with the targets?»[21]

The Committee of Ministers pointed out in this context and with regard to the 660 million tonnes of CO_2 equivalents put forward by Switzerland that experts — even when applying the most generous calculation method for Switzerland — have made a significantly lower estimate of the remaining carbon budget.[22] This budget would be exhausted by 2032 if Switzerland were to maintain its current emissions trajectory.[23] The Committee of Ministers will resume its supervision in September 2025.

III. Switzerland's carbon budget

The ECtHR not only stated that it is possible to quantify a national carbon budget in relation to the global remaining carbon budget, based, *among other things*, on the principle of common but differentiated responsibilities under the UNFCCC and the Paris Climate Agreement (§§ 571, 254, 215–229). In its judgment, it also noted by way of example that the European Climate Act provides for the establishment of indicative GHG budgets by a Scientific Advisory Board on the basis of the best available science (§§ 211 and 571).[24] In June 2023, the European Scientific Advisory Board on Climate Change (ESABCC) adopted such a determination, based on fairness considerations,[25] in its "Scientific Advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050" (ESABCC Report).[26]

The association KlimaSeniorinnen Schweiz and Greenpeace Switzerland took

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on the FOEN's expert assessment of 28 August 2024, https://www.bafu.admin.ch/bafu/de/home/themen/klima/fachinformationen/klima--internationales/egmr-urteil.html.

21 Committee of Ministers of the Council of Europe, Ministers' Deputies 1521st meeting from 4.–6. March 2025, decisions, https://rm.coe.int/0900001680b476d8, which refers to the questions contained in the Notes on the Agenda, https://search.coe.int/cm?i=0900001680b449ba.

22 Notes on the Agenda (footnote 21).

23 Notes on the Agenda (footnote 21).

24 See Regulation (EU) 2021/1119, Art. 3(2)(b), Art. 4(4).

25 VAN BERKEL / TAN / UDELL / WILLIAMSON (footnote 4), para. 4.1.

26 ESABCC, Scientific Advice for the determination of an EU-wide 2040 climate target and a green house gas budget for 2030–2050 dated 15 June 2023, https://climate-advisory-board.europa.eu/reports-and-publications/scientific-advice-for-the-determination-of-an-eu-wide-2040/scientific-advice-for-the-determination-of-an-eu-wide-2040-climate-target-and-a-greenhouse-gas-budget-for-2030-2050.pdf/@@display-file.

this as an opportunity to commission experts to calculate Switzerland's remaining carbon budget, based on the same methodological approaches used by the European Scientific Advisory Board on Climate Change. The expert report "Estimates of fair share carbon budgets for Switzerland" dated 13 January 2025[27] thus estimates Switzerland's remaining national carbon budget using four different methodological approaches:[28] "Equality" (expressed by an equal per capita distribution of the global carbon budget, accounting from 2015), "Responsibility" (expressed by an equal per capita distribution of the global carbon budget, accounting from 1990), "Capability" (considering Switzerland's relative GDP per capita, accounting from 2015) and "Responsibility and Capability" (considering Switzerland's relative GDP per capita, accounting from 1990).

The expert report concluded that Switzerland had already exhausted its carbon budget by 2020 under the "capability" methodological approach, and as early as 1999 under the "responsibility and capability" approach.[29] All CO_2 emissions after these years exceed the national carbon budget calculated in this way, which is why not only net zero targets, but also net negative targets would need to be set. Under the "responsibility" approach, the remaining national carbon budget of 90 million tonnes of CO_2 will be exhausted before the end of 2025, if emissions remain at a level similar to 2022.[30]

Only the equal per capita approach as of 2015 (the most generous interpretation of a fair share for Switzerland, as defined by the ESABCC) results in a non-negligible positive carbon budget for Switzerland. This amounts to 260 million tonnes of CO_2 from the beginning of 2023.[31] In order to stay within this budget, Switzerland would need to reach net zero CO_2 emissions by 2038.[32]

Regardless of the methodological approach chosen: To achieve the targets, all feasible domestic measures must be implemented with the highest possible level of ambition.[33] If this is not sufficient, additional CO_2 reductions must be achieved through permanent CO_2 removal and emission reductions abroad.[34]

27 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Estimates of fair share carbon budgets for Switzerland dated 13 January 2025 (expert report), https://www.klimaseniorinnen.ch/wp-content/uploads/2025/01/Annex_II_Pelz_du_Pont_Nicholls_Switzerland_Carbon_Budget.pdf.

28 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), Appendix 1.

29 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), pp. 18 and 21.

30 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), pp. 17 and 21.

31 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), pp. 17 and 21.

32 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, EXPERT REPORT (footnote 27), pp. 18 and 21.

33 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, EXPERT REPORT (footnote 27), p. 21 et seq.

34 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), p. 21 et seq.

Switzerland plans to achieve the following targets (through measures both domestically and abroad): a reduction of 50% by 2030 and 75% by 2040, respectively, compared to 1990 and net zero by 2050. Achieving these targets would lead to cumulative emissions of around *530 million tonnes of CO2-eq* between 2023 (the point from which the experts calculated Switzerland's remaining carbon budget) and 2050.[35]

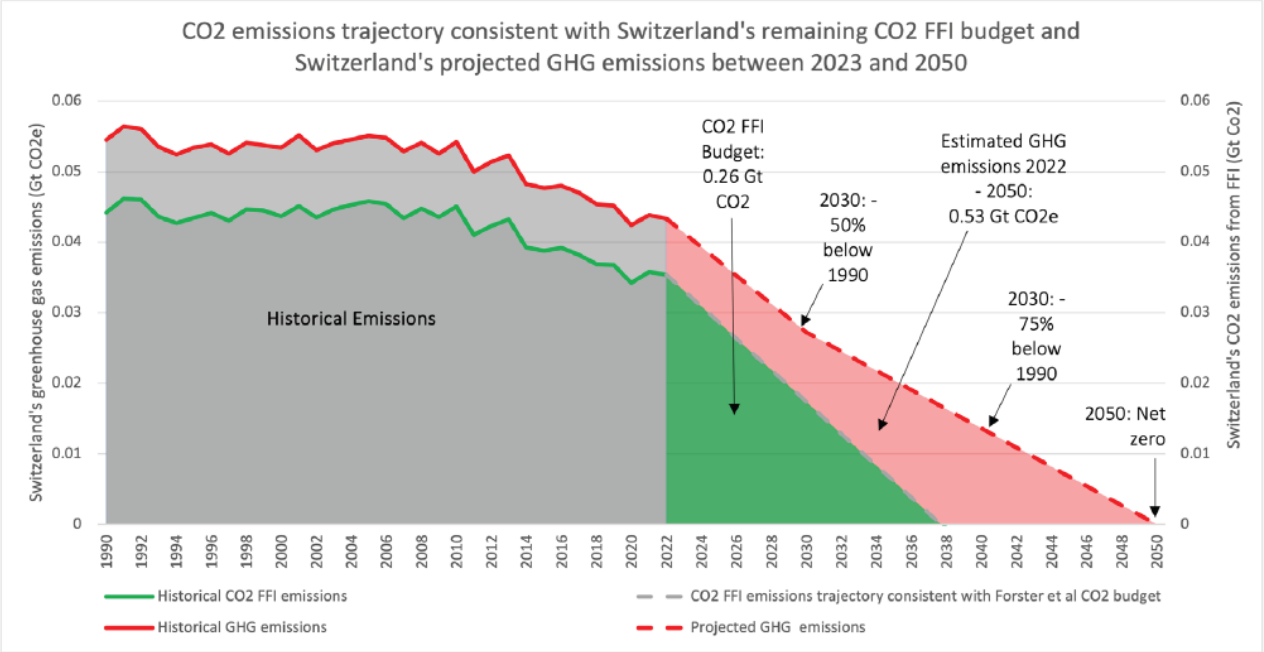

Figure 2 – Switzerland's historical CO_2 emissions from Fossil Fuel and Industry (FFI) are represented by the green solid line. Switzerland's estimated trajectory to reach net zero while remaining within its carbon budget ('equal per capita' approach, using the FORSTER et al. budget as a basis) is represented by the green dashed line. Assuming a budget of 0.26 Gt CO_2 available from the start of 2023, Switzerland would need to reach net zero CO_2 in 2038. For illustrative purposes, Switzerland's historical greenhouse gas emissions are represented by the solid red line (in Gt CO_2e). Switzerland's projected greenhouse gas emissions between 2023 and 2050, assuming it achieves emissions reductions in line with its targets, are represented by the red dashed line. Cumulative emissions over this timeframe are projected to be 0.53 Gt CO_2e. This report does not discuss possible assumptions for non-CO_2 emissions nor LULUCF CO_2 emissions, hence the two cumulative emissions numbers are not directly comparable in terms of fairness principles alone. Quelle: SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Estimates of fair share carbon budgets for Switzerland of 13 January 2025, p. 20.

The emissions currently planned by Switzerland thus far exceed even the most lenient budget under the "equal per capita emissions from 2015" approach – 260 million tonnes of CO_2 – for a 50% probability of staying with the 1.5 °C limit.

35 SETU PELZ / YANN ROBIOU DU PONT / ZEBEDEE NICHOLLS, Expert Report (footnote 27), p. 19. Switzerland's projected emissions of 660 million tonnes of CO_2 equivalent relate to the (longer) period between 2020 and 2050.

IV. Conclusion

The judgment of the ECtHR establishes the human rights obligation of states to take effective measures to combat climate change. The Court has made it clear that the right to protection from the serious effects of climate change is part of the rights guaranteed under Article 8 ECHR. To meet these obligations, states must, among other things, set national carbon budgets that represent a fair share of the global remaining carbon budget, in order to limit warming to 1.5 °C. The climate strategy must be aligned with this budget. The mere setting of net-zero targets by 2050 is not sufficient.

The importance of these two obligations – both in general and for Switzerland – cannot be overstated. The methodologies of the European Scientific Advisory Board on Climate Change provide important reference points for calculating remaining carbon budgets, including for Switzerland. Based on these methods, experts have shown that, under its current climate strategy, Switzerland will far exceed even a national carbon budget calculated on the basis of the most generous assumptions. States are only required to do what is feasible. If states are unable to comply with their national carbon budget despite taking all feasible domestic measures with the highest possible level of ambition, additional CO_2 reductions must and can be achieved by permanently removing CO_2 and reducing emissions abroad.

Finally, the judgment in the KlimaSeniorinnen case makes clear that it is not the applicants, but the states that must demonstrate compliance with the Court's requirements. This includes not only proving that they are on track to meet their self-imposed climate targets, but also providing evidence of a national carbon budget as a fair share of the global budget, and of a climate strategy with climate targets and effective measures to comply with that budget.

Overall, the judgment underscores the responsibility of states in addressing climate change and shows that the protection of human rights requires the effective limitation of global warming.

Résumé

L'arrêt du 9 avril 2024 rendu par la Grande Chambre de la Cour européenne des droits de l'homme (CrEDH) dans l'affaire Verein KlimaSeniorinnen Schweiz et autres c. Suisse a fait l'objet d'une attention sans précédent – aussi bien de la part des médias et de la politique que du monde juridique. Malgré cela, on ne trouve à ce jour pratiquement aucune analyse approfondie des exigences découlant de l'art. 8 de la Convention européenne des droits de l'homme telles que précisées dans cet arrêt en ce qui concerne les mesures à prendre par les autorités étatiques en matière de lutte contre le réchauffement climatique.

La présente contribution entend offrir une meilleure compréhension des exigences en matière de droits humains définies dans cet arrêt. En outre, elle place ces exigences dans le contexte de la procédure devant la CrEDH et dans celui de leur application judiciaire à la politique climatique de la Suisse.

Ainsi, vu sous cet angle, l'arrêt constate l'obligation des Etats de déterminer un budget carbone national équitable par rapport au budget carbone total restant en vue de respecter la limite de 1,5 C. Sur la base d'un tel budget carbone national, il y a lieu d'élaborer et d'édicter une législation climatique qui soit compatible avec ce budget. Il convient de ne pas sous-estimer l'importance de ces deux obligations, non seulement en général, mais aussi pour la Suisse. En effet, les experts ont montré qu'avec sa stratégie climatique actuelle, la Suisse dépassera largement un budget carbone national, même si celui-ci est calculé selon les estimations les plus généreuses. La Suisse a épuisé en 1999 déjà un budget carbone prenant en compte la responsabilité et la capacité de la Suisse.

Riassunto

La decisione della Grande Camera della Corte europea dei diritti dell'uomo (CEDU) del 9 aprile 2024 nel caso Verein KlimaSeniorinnen Schweiz and others v. Switzerland ha ricevuto un'attenzione senza precedenti, non solo da parte dei media e della politica, ma anche da chi è attivo nel campo del diritto. Ciononostante, ad oggi i requisiti in ambito di diritti umani, derivanti dall'art. 8 della Convenzione europea dei diritti dell'uomo e definiti nella sentenza, sugli sforzi da intraprendere a tutela del clima da parte degli Stati non sono stati analizzati in modo approfondito.

Questo articolo intende contribuire a una migliore comprensione dei requisiti definiti nella sentenza. Per farlo, li colloca nel contesto del procedimento dinanzi alla Corte europea dei diritti dell'uomo e nel contesto dell'applicazione giudiziaria rispetto alla politica climatica svizzera.

In buona sintesi, la sentenza stabilisce l'obbligo degli Stati di determinare un bilancio di CO_2 a livello nazionale equo rispetto al bilancio di CO_2 residuo globale per rispettare il limite di 1,5°C. Sulla base di tale bilancio di CO_2 nazionale, deve essere elaborata ed emanata una legislazione climatica con esso compatibile. L'importanza di questi due obblighi – uno generale e uno per la Svizzera – non può essere sottovalutata. Gli esperti hanno dimostrato che con l'attuale strategia climatica, la Svizzera supererà di gran lunga anche un bilancio di CO_2 nazionale calcolato basandosi sulle ipotesi più generose. Un bilancio di CO_2 calcolato invece considerando le responsabilità e le capacità della Svizzera è già stato esaurito nel 1999.