

6. Human rights as procedural due process in climate mitigation policies: *Verein KlimaSeniorinnen Schweiz v. Switzerland*

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1. SKETCHING A JUDICIAL FRAMEWORK GOVERNING THE NEXUS BETWEEN CLIMATE CHANGE MITIGATION AND HUMAN RIGHTS FOR EUROPE

On 9 April 2024, the European Court of Human Rights (ECtHR) in Strasbourg (France), in a Grand Chamber judgment, in the matter of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (hereafter referred to as '*KlimaSeniorinnen*'), found Switzerland to be in violation of the right to respect for private and family life as well as the right of access to a court, both enshrined in the European Convention on Human Rights (ECHR).¹ Switzerland, the ECtHR held, failed to comply with its 'positive obligations' due to the insufficient actions taken to mitigate climate change.² The judgment was delivered in conjunction with two other decisions, both pertaining to the nexus between human rights and climate change mitigation, namely *Duarte*

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov. 1950), 312 E.T.S. 5, as amended by Protocols Nos. 11, 14 and 15 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16 on 1 June 2010.

² European Court of Human Rights (sitting as a Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application no. 53600/20, 9 April 2024, paras. 574 and 640. The ECtHR's judgments and decisions are available at: <https://hudoc.echr.coe.int/>.

*Agostinho and Others v. Portugal and 32 Others*³ and *Carême v. France*.⁴ In contrast to *KlimaSeniorinnen*, the Court declared both *Duarte* and *Carême* inadmissible, albeit on different grounds. In *Duarte* the applicants had failed to exhaust domestic remedies,⁵ while in *Carême* the Court determined that the applicant had relinquished his victim status upon his departure from the municipality of Grande-Synthe near Dunkirk (France), which is considered to be especially vulnerable to the impacts of climate change, including flooding.⁶ While judgments of the ECtHR are merely binding *inter partes*,⁷ the underlying interpretation of the ECHR by the Court affects all of the contracting parties (principle of *res interpretata*).⁸ Against this backdrop, *KlimaSeniorinnen* sketched a framework governing the nexus between human rights enshrined in the ECHR and climate change mitigation obligations within the jurisdiction of the ECtHR, that is, the *Council of Europe* (CoE) with its 46 member states having a combined population of about 675 million.⁹

³ European Court of Human Rights (sitting as a Grand Chamber), *Duarte Agostinho and Others v. Portugal and 32 Others*, Application no. 39371/20, 9 April 2024.

⁴ European Court of Human Rights (sitting as a Grand Chamber), *Carême v. France*, Application no. 7189/21, 9 April 2024.

⁵ ECtHR, *Duarte Agostinho* (note 3), para. 227; see ECHR (note 1), article 35 section 1 (according to which '[t]he Court may only deal with the matter after all domestic remedies have been exhausted').

⁶ ECtHR, *Carême* (note 4), paras. 15, 83 and 88; see ECHR (note 1), article 34 sentence 1 (according to which '[t]he Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto').

⁷ ECHR (note 1), article 46 section 1 (according to which '[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties').

⁸ Angelika Nussberger, *The European Court of Human Rights* (OUP 2020), 173; see also Oddný Mjöll Arnardóttir, 'Res Interpretata, Erga Omnes Effect and the Role of the Margin of Appreciation in Giving Domestic Effect to the Judgments of the European Court of Human Rights' (2017) *European Journal of International Law* 819, 823–4 (pointing out that '[t]he principle of *res interpretata* rests on the simple truth that despite the fact that ECHR law contains no doctrine of binding precedent, once the ECtHR has pronounced on an issue, it is to be expected that the Convention will be interpreted and applied in the same manner if the Court is confronted with the same issue again in a different state').

⁹ The Council of Europe (CoE) with the ECtHR as 'its "jewel"' (Nussberger (note 8) 38) based in Strasbourg is, of course, distinct from the European Union (EU) and its Luxembourg-based European Court of Justice (ECJ). All 27 member states of the EU are, at the same time, members of the CoE. States such as

KlimaSeniorinnen falls into the category of *strategic climate change litigation*.¹⁰ The application relies on human rights to compel governments to implement specific emission reduction policies in order to mitigate climate change.¹¹ The judgment of the ECtHR was preceded by a finding by an administrative agency and two judgments of domestic courts – the Federal Administrative Court (appellate court)¹² and the Federal Supreme Court (apex court)¹³ – both declining to consider the applicants’ motion on its merits. This chapter will highlight these different judicial approaches to climate change litigation. Sections 3 and 4 outline the domestic legal and factual context in which the case has arisen. Section 5 analyses the strategy behind the lawsuit. This chap-

Albania, Armenia, Azerbaijan, Iceland, Moldova, Norway, Serbia, Switzerland, Türkiye, Ukraine and the United Kingdom are members of the CoE but not of the EU. Canada, the Holy See, Japan, Mexico and the United States are Observer States to the CoE. Israel is an Observer to the CoE’s Parliamentary Assembly. On 16 March 2024, the CoE’s Committee of Ministers adopted Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the CoE. The CoE’s Committee of Ministers further decided to suspend all relations with Belarus owing to the country’s active participation in the aggression of the Russian Federation against Ukraine on 17 March 2022 (CM/Del/Dec (2022)1429/2.5). While having joined the CoE on 6 May 1963, Switzerland is not a member of the European Union (EU), despite a densely knit web of bilateral treaties. See the official register of sectoral treaties with the EU (in French) at: <https://www.fedlex.admin.ch/fr/sector-specific-agreements/EU-acts-register>.

¹⁰ See, in more detail, Johannes Reich, ‘Strategische Prozessführung im Kontext eines hegemonialen politischen Systems’ (2025) *Jahrbuch des öffentlichen Rechts der Gegenwart* 439, [DOI:10.1628/joer-2025-0020].

¹¹ Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015), 4–9 (distinguishing various categories of climate change litigation).

¹² [Swiss] Federal Administrative Court, decision BVGer A-2992/2017 (27 November 2018); all decisions of the Court are available at: <https://www.bvger.ch/en/jurisprudence/judgments-database>; the judgment in question (in German) is available at: https://bvger.weblaw.ch/pdf/A-2992-2017_2018-11-27_8c2c4cc9-5956-4efb-a4a2-0471e19a4108.pdf.

¹³ [Swiss] Federal Supreme Court [official designation: *Bundesgericht* (German), *Tribunal fédéral* (French), *Tribunale federale* (Italian); literal translation: Federal Court], decision BGE 146 I 145 (5 May 2020); all decisions of the Court are available at: www.bger.ch; for a detailed assessment of the judgment (in German) see Johannes Reich, ‘Bundesgericht, I. öffentlich-rechtliche Abteilung, 1C_37/2019, 5. Mai 2020 [Verein KlimaSeniorinnen Schweiz et al. gegen Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation (UVEK)]’ (2020) *Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht [ZBI]* 489, 497–507, available at: <https://t.uzh.ch/lq6>.

ter then gives an overview of previous court decisions in section 6. A detailed analysis of the ECtHR *KlimaSeniorinnen* judgment is given in section 7, and its aftermath is analysed in sections 8 and 9. The chapter concludes with observations in section 10 on the possible legal and political consequences of the case.

2. SWITZERLAND'S AMBIVALENT GHG EMISSIONS RECORD: VAST DIFFERENCE BETWEEN DOMESTIC AND CONSUMPTION-BASED EMISSIONS

In 2023, Switzerland's greenhouse gas (GHG) emissions amounted to 40.85 million tonnes of CO₂ equivalents (territorial emissions).¹⁴ Based on the emissions generated on Switzerland's territory, the country was responsible for 0.09 percent of global CO₂ emissions in 2023.¹⁵ The country's share of global cumulative emissions of CO₂ since 1750 (historical emissions) stands at 0.17 percent.¹⁶ Switzerland's GHG emissions decreased by 26.1 percent between 1990 and 2023, while its permanent resident population grew by 32.1 percent.¹⁷ This corresponds to a reduction of 44 percent per capita.¹⁸ In the sector 'households and services' ('buildings'), a significant reduction of 46 percent was achieved during that time, while the 'industry' sector reduced its GHG emissions by 32 percent.¹⁹ GHG emissions from transport account for 33.6 percent of total territorial emissions but merely dropped by a dismal 8 percent between 1990 and 2023.²⁰ In line with the system boundaries set out in the

¹⁴ *Federal Office for the Environment*, *Kenngroessen zur Entwicklung der Treibhausgasemissionen in der Schweiz 1990–2023* [as of April 2025], 2025, 9, 12, 41, 61, 63, available (in German) at: https://www.bafu.admin.ch/dam/bafu/de/dokumente/klima/fachinfo-daten/kenngroessen_thg_emissionen_schweiz.pdf.download.pdf/Kenngroessen_C3%B6ssen_2025_DE.pdf.

¹⁵ Our World in Data, *Switzerland: What share of global CO2 emissions are emitted by the country?*, available at: <https://ourworldindata.org/co2/country/switzerland#what-share-of-global-co2-emissions-are-emitted-by-the-country>.

¹⁶ Hannah Ritchie, Pablo Rosado, & Max Roser in: *Our World in Data*, *Switzerland: What share of global cumulative CO₂ has the country emitted?* (base line: year of 1750), available at: <https://ourworldindata.org/grapher/share-of-cumulative-co2?time=latest&country=~CHE>.

¹⁷ Federal Office for the Environment (note 14), 11–12.

¹⁸ Federal Office for the Environment (note 14), 39.

¹⁹ Federal Office for the Environment (note 14), 39.

²⁰ Federal Office for the Environment (note 14), 39.

Paris Agreement, these figures do not take into account emissions from international aviation and shipping.²¹

In comparison, Switzerland's record on GHG emissions is *ambivalent at best*. The country's per capita GHG emissions of 4.6 tonnes of CO₂ equivalents per year²² are above global average but relatively moderate when considered in the context of Switzerland's status as one of the most advanced and highly developed free market economies. Taking into account all consumption-based emissions generated on Swiss territory and abroad, including imported goods and international air travel, however, Switzerland's GHG footprint stands at 11.3 tonnes per capita and year, well above the global average of about 6 tonnes.²³ On this basis, Switzerland *ranks among the highest global emitters per capita* – surpassing countries such as Japan (10.6 tonnes) and Germany (10.4 tonnes), though considerably lagging behind the United States (18.1 tonnes), Australia (17.9 tonnes) or Canada (15.2 tonnes).²⁴ There are three main factors that contribute to the significant difference between domestic and consumption-based emissions. The first is the fact that domestic electricity production is largely CO₂ free.²⁵ The second is the absence of virtually any heavy industry.²⁶ The third is that international air traffic is not included in territorial emissions due to the defined system boundaries.²⁷ Taking international air traffic into account would increase territorial emissions by around 13 percent.²⁸

²¹ See Federal Office for the Environment (note 14), 3.

²² Federal Office for the Environment (note 14), 12.

²³ Federal Council, *Environment Switzerland 2022* (2022) 73, available at: <https://www.bafu.admin.ch/en/publication?id=GjWv4YDOaKui>.

²⁴ Federal Council (note 23), 73.

²⁵ Federal Council (note 23), 73.

²⁶ Federal Council (note 23), 73.

²⁷ On these system boundaries see Federal Office for the Environment (note 14), 3.

²⁸ See Federal Office for the Environment, *Greenhouse Gas Emissions from Aviation* (15 April 2025), available at: https://www.atlas.bfs.admin.ch/maps/13/de/17804_229_228_227/27579.html.

3. AN UNFAVOURABLE CONSTITUTIONAL ENVIRONMENT FOR CLIMATE CHANGE LITIGATION: WEAK CONSTITUTIONAL REVIEW AND DIRECT DEMOCRACY

Switzerland is a federal state characterised by ‘extreme decentralization’,²⁹ comprising the federal government (Federation), the 26 constituent units (cantons) and 2,131 municipalities.³⁰ Federal Parliament is assigned a more prominent role than that of the executive and the judiciary. The Federal Constitution³¹ explicitly states that the Federal Parliament, subject to the rights of the People and the Cantons, ‘is the supreme authority of the Confederation’.³² This elevated position of Parliament also affects the powers of the judiciary. Although the United States Supreme Court set out the constitutional blueprint for the Federal Supreme Court in the 1870s, the Federal Constitution requires all courts to adhere to federal statutes enacted by Parliament, as well as to international law. This applies even if such domestic legislation or treaties conflict with the Federal Constitution. Therefore, it is the responsibility of Federal Parliament rather than the courts to determine, in the process of legislation (with regard to domestic law) or ratification (as far as treaties are concerned), respectively, whether a federal statute or a treaty under consideration is compatible with the Federal Constitution. Once Parliament has answered this question in the affirmative, the courts ought to abstain, in principle, from re-examining the Federal Parliament’s decision. Furthermore, neither the Federal Constitution nor federal legislation provide for a mechanism by which Federal Statutes (federal acts) or Federal Ordinances may be subjected to abstract constitutional review.

Switzerland’s ratification of the ECHR on 28 November 1974 has somewhat alleviated this system of *weak constitutional review* of Federal Statutes.³³

²⁹ Lori Thorlakson, ‘Comparing Federal Institutions: Power and Representation in Six Federations’ (2003) 26(2) *West European Politics*, 1, 18.

³⁰ See Swiss Federal Office of Statistics, *Les 2131 communes de la Suisse au 1.1.2024*, available at: https://www.atlas.bfs.admin.ch/maps/13/de/17804_229_228_227/27579.html.

³¹ Federal Constitution of the Swiss Confederation of 18 April 1999 [unofficial English translation available at: www.admin.ch/opc/en/classified-compilation/19995395/index.html] (Fed. Const.).

³² Fed. Const. (note 31), article 148 section 1 (official French version): ‘L’Assemblée fédérale est l’autorité suprême de la Confédération, sous réserve des droits du peuple et des cantons’.

³³ Fed. Const. (note 31), article 190 (official French version): ‘Le Tribunal fédéral et les autres autorités sont tenus d’appliquer les lois fédérales et le droit

In accordance with its mandate, the ECtHR monitors Switzerland's compliance with the ECHR in response to an application, including when an alleged violation of ECHR rights stems from a federal statute. In order to prevent the ECtHR from ruling against Switzerland, the Federal Supreme Court has declared that the Convention takes precedence in the event of a conflict between a right guaranteed by the ECHR and federal law, including not only federal statutes but the Federal Constitution.³⁴ The Federal Supreme Court has generally adopted a pragmatic approach in order to avoid conflicts between international and domestic law. However, in a judgment handed down in 2012, the Court argued in fundamental terms on the basis of the principle of *pacta sunt servanda* under international law and presented the political authorities with the choice of either fully complying with the obligations arising from the ECHR or withdrawing from the Convention.³⁵

In addition to a comparatively weak constitutional review, the Swiss political and legal system is characterised by a strong emphasis on *direct democracy*. All amendments to the Federal Constitution are subject to a mandatory referendum. In a similar vein, each Federal Statute passed and each treaty ratified by Federal Parliament is subject to an optional referendum. Such a referendum is held if 50,000 signatures of Swiss citizens with the right to vote are collected within 100 days of the enactment's official publication. As a result, at the federal level alone, 682 popular votes were held between 1848 and 2023.³⁶ While only about 7 percent of the legislative acts eligible for an optional referendum are in fact challenged in a referendum at the ballot box,³⁷ about 42 percent of those bills passed by the Federal Parliament that were indeed challenged by an optional referendum failed to win a majority at the ballot box.³⁸ The

international'; for a more comprehensive analysis see Johannes Reich, 'Verhältnis von Demokratie und Rechtsstaatlichkeit', in Oliver Diggelmann, Maya Hertig Randall & Benjamin Schindler (eds), *Verfassungsrecht der Schweiz – Droit constitutionnel suisse* (Schulthess 2020), 333, 349–55 (DOI: doi.org/10.5167/uzh-184637); see also Johannes Reich, 'Switzerland', in Richard Albert et al. (eds.), *2024 Global Review of Constitutional Law* (2025), 308–312, 311 (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5912623), terming the ECHR 'a shadow- or supra-constitution from a Swiss perspective'.

³⁴ See in more detail Johannes Reich, 'Switzerland', in Richard Albert et al. (eds.), *2018 Global Review of Constitutional Law* (2019), 298–302, 299 (available at: <https://ssrn.com/abstract=3471638>).

³⁵ Reich (note 34), 299 (with reference to the decision BGE 139 I 16).

³⁶ Adrian Vatter, *Das politische System der Schweiz* (5th ed, Nomos 2024), 358.

³⁷ Vatter (note 36) 290.

³⁸ Pascal Sciarini & Anke Tresch, 'Votations populaires', in Yannis Papadopoulos et al (eds), *Handbuch der Schweizer Politik – Manuel de la politique suisse* (7th ed, 2022), 559 and 565.

higher the rate of approval of a bill in parliament, the lower the empirical probability that an optional referendum will be called, while the level of parliamentary consensus has no impact at all on the outcome of a popular vote on such an optional referendum.³⁹ The high degree of stress and uncertainty that the threat of an optional referendum induces in the legislative process makes building broad coalitions around reforms at the cost of *mere incrementalism in policy-making* a prudent political strategy.⁴⁰

In essence, Switzerland's constitutional order is distinguished by the pervasive influence of the political system.⁴¹ The prevailing tenets of republicanism have led to the predominance of direct democratic instruments in conflict resolution, superseding the utilisation of court judgments (see also section 8). The characteristics of the legal and political system have been identified as factors which limit the possibility of initiating legal action on the grounds of climate-related issues.

4. FEDERAL CLIMATE CHANGE LEGISLATION: INCREMENTALISM, TRIAL AND ERROR, AND OMISSIONS⁴²

International treaties entered into by the Federation⁴³ become part of Swiss federal law upon ratification ('monism').⁴⁴ Switzerland ratified the 1992 United Nations Framework Convention on Climate Change (UNFCCC),⁴⁵ the

³⁹ Alexander Trechsel & Pascal Sciarini, 'Démocratie directe en Suisse: l'élite politique victime des droits populaires?' (1996) 2 *Swiss Political Science Review* 201, 220–25.

⁴⁰ Yannis Papadopoulos, 'How does direct democracy matter? The impact of referendum votes on politics and policymaking' (2001) 24 *West European Politics* 35, 42–3.

⁴¹ See Reich (note 10), 450–51.

⁴² For an in-depth account see Johannes Reich, 'Federalism and Mitigating Climate Change: The Merits of Flexibility, Experimentalism, and Dissonance' (2021) *Transnational Environmental Law* 263, 270–76.

⁴³ Fed. Const. (note 31), article 54 section 1 (official French version): 'Les affaires étrangères relèvent de la compétence de la Confédération'; see e.g. Federal Supreme Court (note 13), decision 96 I 737 (23 December 1970), section 3.

⁴⁴ See, e.g. Federal Supreme Court (note 13), decision 94 I 669 (22 November 1968), section 2.

⁴⁵ United Nations Framework Convention on Climate Change, New York (USA), 9 May 1992, in force 21 March 1994, available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>. (ratified by Switzerland on 10 December 1993, No. 0.814.01, available at: <https://www.admin.ch/opc/fr/classified-compilation/19920113/index.html>; authentic French version).

1997 Kyoto Protocol including the 2012 Doha Amendment,⁴⁶ and the 2015 Paris Agreement.⁴⁷ With regard to the latter, Switzerland pledged ‘to reduce its greenhouse gas emissions by 50 percent by 2030 compared to 1990 levels’.⁴⁸ Between 1990 and 2020, domestic GHG emissions decreased by 19 percent and stood at 4 tonnes of carbon dioxide (CO₂) equivalents per capita in 2020.⁴⁹ Switzerland therefore missed, albeit narrowly, its national target of minus 20 percent for 2020,⁵⁰ whereas it remained in compliance with its commitment under the Kyoto Protocol for the period 2013–2020 due to emission reductions by way of projects initiated outside of Switzerland.⁵¹

Targets deriving from Switzerland’s pledges under international law and measures to reduce GHG emissions attributable to the use of fossil fuels as energy sources are stipulated in the Federal Act on the Reduction of CO₂ Emissions (Federal CO₂ Act).⁵² Owing to direct democracy, incrementalism and an approach of trial and error have been the prevailing characteristics

⁴⁶ Kyoto Protocol on the United Nations Framework Convention on Climate Change, 5 October 2011, available at: <http://unfccc.int/resource/docs/convkp/kpeng.pdf> (ratified by Switzerland on 9 July 2013, No. 0.814.011, available at: <https://www.fedlex.admin.ch/eli/cc/2004/802/fr>; authentic French version).

⁴⁷ Paris Agreement, Paris (France), 12 Dec. 2015, in force 4 November 2016, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf. (ratified by Switzerland on 6 October 2017, No. 0.814.012. Available at: <https://www.admin.ch/opc/fr/classified-compilation/20162916/index.html>; authentic French version).

⁴⁸ ‘Switzerland’s intended nationally determined contribution (INDC) and clarifying information’ (27 February 2015), p. 1. Available at: https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Switzerland%20First/15%2002%2027_INDC%20Contribution%20of%20Switzerland.pdf.

⁴⁹ Federal Council (note 23), 68.

⁵⁰ Federal Council (note 23), 68.

⁵¹ Federal Office for the Environment FOEN, 2020 target achievement review (for the years 2013 to 2020) at: <https://www.bafu.admin.ch/bafu/en/home/topics/climate/info-specialists/emission-reduction/target-achievement-review/2020-target.html>.

⁵² Federal Act on the Reduction of CO₂ Emissions, 23 December 2011, No. 641.71 (Federal CO₂ Act); official titles: *Bundesgesetz über die Reduktion der CO₂-Emissionen* (German)/*Loi fédérale sur la réduction des émissions de CO₂* (French)/*Legge federale sulla riduzione delle emissioni di CO₂* (Italian). Available at: <https://www.admin.ch/opc/en/classified-compilation/20091310/index.html> (non-official English translation).

of Switzerland's domestic climate policy.⁵³ The 'CO₂ levy', an incentive tax ('Pigouvian tax') provided for in the Federal CO₂ Act, has been the centre-piece of Swiss climate policy since 1 May 2000.⁵⁴ The levy is collected on the production, extraction and import of 'thermal fuels' (heating oil, natural gas, coal etc.) as opposed to 'motor fuels' (petrol, diesel, kerosene, etc.).⁵⁵ Both businesses and private individuals pay the CO₂ levy when purchasing energy sources such as heating oil, natural gas, coal and other fossil fuels. The amount of the levy is determined by the carbon content of each energy source. Only partially in line with the concept of an incentive tax, which ought to be fiscally neutral, approximately two-thirds of the revenue from the CO₂ levy are redistributed to both the resident population and the companies headquartered in Switzerland, evenly divided according to recipients.⁵⁶

On 25 September 2020, Federal Parliament decided to increase the ceiling of the existing CO₂ levy and to introduce a new levy on motor fuels and commercial passenger flights.⁵⁷ At the time, it was estimated that the new levy would increase the price of gasoline by up to CHF 0.12 (EUR 0.11/USD 0.13) per litre and result in a rise of prices for commercial flights of between CHF 30 to 120 (EUR 28 to 111/USD 33 to 130) per ticket as of 2025.⁵⁸

After a fierce campaign, supported by the oil importers' association, the homeowners' association and conservative parties, among others, on 13 June 2021, the revision of the Federal CO₂ Act was narrowly *defeated in a referendum*, with 51.59 percent of the votes cast.⁵⁹ In order to avoid a regulatory gap, since the overall 20 percent emissions reduction target was only set until 2020, Federal Parliament extended the target by a further 1.5 percent per year first until the end of 2021, then until the end of 2024.⁶⁰ These temporary revisions of the Federal CO₂ Act took effect on 1 January 2021 and 2022, respectively.⁶¹ On 18 June 2023, in yet another popular vote, the 'Federal Act on

⁵³ Johannes Reich & Nina Boss, 'Switzerland' (2023) 33:1 *Yearbook of International Environmental Law* 149, 149–53.

⁵⁴ Reich (note 42) 273.

⁵⁵ See Federal CO₂ Act (note 52), article 29 section 1 in connection with article 2 sections 1 and 2.

⁵⁶ See Federal CO₂ Act (note 52), article 36.

⁵⁷ See Reich (note 42) 273 (with further references).

⁵⁸ Flora Hausammann & Johannes Reich, 'Switzerland' (2022) 32:1 *Yearbook of International Environmental Law* 145, 146–7 (offering a more detailed account).

⁵⁹ Reich (note 42) 273–4 (with further references).

⁶⁰ Hausammann & Reich (note 58) 147.

⁶¹ See Official Collection of Federal Law, RO 2020 1269 (in French), at: <https://www.fedlex.admin.ch/eli/oc/2020/243/fr>, and RO 2022 262 (in French), at: <https://www.fedlex.admin.ch/eli/oc/2022/262/fr>.

Climate Protection Targets, Innovation, and Strengthening Energy Security (Federal Act on Climate Protection)', providing for both a roadmap to 'net zero' by 2050 and subsidies for technical innovation,⁶² was *approved* with a majority of 59.1 percent.⁶³ The Federal Act on Climate Protection, with its emission reduction targets for the period from 2025 to 2050,⁶⁴ and the revised Federal CO₂ Act, adopted by the Federal Parliament on 15 March 2024,⁶⁵ both took effect on 1 January 2025. Against this backdrop, from 1 January 2021 to 31 December 2024 Switzerland lacked domestic regulations setting *interim* targets and pathways to meet the commitment made under the Paris Agreement to 'reduce its GHG emissions by 50 percent (...) by 2030'.⁶⁶ Nevertheless, from 1 January 2021 to 31 December 2024, domestic regulations were implemented that at least set *annual* GHG emission reduction targets.⁶⁷ Notwithstanding this, all *instruments* of Switzerland's climate change law, in particular the CO₂ levy, remained in force and were legally binding for the entire period from 1 January 2021 to 31 December 2024. The same is true for the article stating the purpose of the Federal CO₂ Act to reduce GHG emissions, 'particularly CO₂ emissions from the use of fossil fuels, with the aim of keeping the global temperature increase below 2°C'.⁶⁸

Two major reasons explain the omissions with regard to specific categories of targets and reduction pathways: direct democracy and not being a member of the EU. Direct democracy adds a high dose of unpredictability and uncertainty to public policy making, often resulting in a trial and error approach to legislation. Moreover, as Switzerland is not a member of the EU, it was not bound by the EU's climate law with its interim targets.⁶⁹

⁶² For a detailed account see Reich & Boss (note 53) 149–53.

⁶³ See Federal Chancellery, Votation no. 663: Résultats dans les cantons, available at: <https://www.bk.admin.ch/ch/f/pore/va/20230618/can663.html>.

⁶⁴ See Systematic Collection of Federal Law, RS 814.310 (in French), at: <https://www.fedlex.admin.ch/eli/cc/2023/655/fr>.

⁶⁵ See Official Collection of Federal Law, RO 2024 376 (in French), at: <https://www.fedlex.admin.ch/eli/oc/2024/376/fr>.

⁶⁶ See note 48.

⁶⁷ See notes 60 and 61.

⁶⁸ Federal CO₂ Act [in force from 1 January 2013 until 31 December 2024] (note 52), article 1 section 1 (transl.).

⁶⁹ See e.g. Parliament and Council Regulation 2021/1119 of 30 June 2021 Establishing the Framework for Achieving Climate Neutrality and Amending Regulations (EC) No. 401/2009 and (EU) 2018/1999, 2021 OJ L243/1, article 4 (on intermediate Union climate targets) and article 8 (with regard to 'the pathway for the reduction of net emissions at Union level').

5. LITIGATION STRATEGY: MAKING CLIMATE CHANGE MITIGATION A HUMAN RIGHTS OBLIGATION

5.1 Overcoming Obstacles Relating to Standing: ‘Association’ and Particular Vulnerability to Heatwaves due to Old Age and Female Gender

KlimaSeniorinnen is a case rooted in a deliberate decision by civil society actors to transform mitigating climate change from a policy under international and domestic administrative law into an obligation under both constitutional and international human rights law. On 24 June 2015, the District Court of The Hague decided on an application brought by *Stichting Urgenda* (Urgenda Foundation) on behalf of several hundred private citizens and ordered the State of the Netherlands to reduce its GHG emissions by at least 25 percent by 2020 measured against 1990 levels.⁷⁰ Greenpeace Switzerland, a foundation under Swiss law and the national branch of an environmental non-governmental organisation,⁷¹ sought legal advice with two legal counsels on how to initiate similar proceedings against Swiss federal authorities.⁷²

Unlike the Dutch Civil Code,⁷³ Swiss federal law does not grant standing to private organisations to initiate proceedings to protect public interests. Only a handful of provisions of federal statutory law grant non-profit organisations standing to seek a remedy against administrative acts in selected areas of environmental law and only after meeting certain criteria and in pursuance of

⁷⁰ Rechtbank Den Haag [The Hague District Court], *Stichting Urgenda [Urgenda Foundation] v. The State of the Netherlands (Ministry of Economic Affairs and Climate Policy)*, Case No. ECLI:NL:RBDHA:2015:7145, 24 June 2015, available at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7145>.

⁷¹ See Commercial Register of the Canton of Zurich: Entry ‘Greenpeace Schweiz’ (UID: CHE-106.028.233), available at: <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-106.028.233>.

⁷² See Cordelia Ch. Bähr, Ursula Brunner, Kristin Casper & Sandra H. Lustig, ‘KlimaSeniorinnen: Lessons from the Swiss Senior Women’s Case for Future Climate Litigation’ (2018) 9 *Journal of Human Rights and the Environment* 194, 201 (noting that Greenpeace Switzerland requested the two authors of the paper who are mentioned first ‘to advise whether it would be possible to bring a similar case’ [similar to *Urgenda* that is]).

⁷³ See Dutch Civil Code, article 3:305a; official title: ‘*Burgerlijk Wetboek*’, available at: <https://www.admin.ch/opc/en/classified-compilation/19830267/index.html> (non-official English translation).

specific public interests.⁷⁴ Mechanisms for collective redress generally remain scarce in Switzerland's procedural laws.⁷⁵ Above all, statutory law fails to offer class actions or any meaningful measure serving as a functional equivalent of a class action.⁷⁶ Several claimants may thus merely act jointly as plaintiffs, to the extent that their rights result from similar circumstances or legal grounds.⁷⁷ Such simple joinder of parties, however, neither limits a claimant's potential liability for court costs and party compensation, nor is it an appropriate measure to seek compensation for damage being both low in value and scattered among numerous aggrieved parties.⁷⁸

Longstanding case law from Switzerland's highest courts, nonetheless, allows organisations with full legal capacity to file actions in their own name on behalf of their members. The case law requires that the organisation's bylaws authorise it to safeguard the relevant interests and that the majority or a large number of its members would individually have standing to seek a remedy. This is known as a 'group action'.⁷⁹ An organisation invoking sub-

⁷⁴ See *inter alia*, Federal Act on the Protection of the Environment, 7 Oct. 1983, No. 814.01, article 55 (granting standing to certain environmental non-governmental organisations regarding rulings on planning, construction or modification of installations for which an environmental impact assessment is required), available at: <https://www.admin.ch/opc/en/classified-compilation/19830267/index.html> (non-official English translation); Federal Act on the Protection of Nature and Cultural Heritage, 1 July 1966, No. 451, article 12 section 1b, available at: <https://www.admin.ch/opc/en/classified-compilation/19660144/index.html> (non-official English translation); Federal Act on Forest, 4 October 1991, No. 921, article 46 section 3, available at: <https://www.admin.ch/opc/en/classified-compilation/19910255/index.html> (non-official English translation).

⁷⁵ See Federal Council, *Exercice collectif des droits en Suisse: état des lieux et perspectives* [Report on Collective Redress in Switzerland] (2013), 15–42, available at: <https://www.bj.admin.ch/bj/fr/home/publiservice/publikationen/berichte-gutachten/2013-07-03.html>.

⁷⁶ See Samuel P. Baumgartner, 'Class actions and group litigation in Switzerland' (2006) 27 *Northwestern Journal of International Law & Business*, pp. 301–350, at 309–16.

⁷⁷ See Swiss Civil Procedure Code, 19 Dec. 2008, No. 272, article 71 section 1, available at: <https://www.admin.ch/opc/en/classified-compilation/20061121/index.html> (non-official English translation).

⁷⁸ For a recently dismissed equivalent of a 'class action' seeking compensation from the Volkswagen Company on account of its software designed to deceive regulators measuring emissions from diesel powered cars, see Federal Supreme Court (note 13), decision 4A_483/2018 (8 February 2018), available at: www.bger.ch.

⁷⁹ See e.g. Federal Supreme Court (note 13), decision 142 II 80 (9 September 2015), section 1.4.2.

stantive rights on behalf of its members in this way is typically established as an ‘association’ (German: *Verein*; French: *association*; Italian: *associazione*) under the Swiss Civil Code.⁸⁰ Founding such an entity merely requires two or more natural or legal persons to consent to establishing an ‘association’ and to agree on the respective bylaws (articles of association) defining the association’s purpose, resources and structure.⁸¹

Subject to statements in the bylaws to the contrary, an association’s liability is limited to its own assets, thereby excluding any personal liability of its members.⁸² Bringing an action by an association on behalf of its members thus significantly reduces the financial risks of litigation that individual claimants would otherwise face. This explains why the statutory purpose of *Verein KlimaSeniorinnen Schweiz* (German) (or *Association des Aînées pour la protection du climat Suisse* in French and *Associazione delle anziane per il clima* in Italian)⁸³ is narrowly confined to lodging ‘legal actions at the federal level in order to safeguard the interests of its members’ and to manage associated media relations.⁸⁴ The association’s bylaws limit the association’s liability to its own assets,⁸⁵ which basically derives from private donations, voluntary member fees and grants by Greenpeace Switzerland.⁸⁶

Under domestic law, organisations such as *KlimaSeniorinnen* are required to demonstrate that the majority of their members would have standing in their individual capacities regarding the matter in dispute, when bringing a case before a court.⁸⁷ Standing (*locus standi*) requires an individual claimant to be affected by the matter in dispute in a specific and particular manner that distinguishes them from the general public. Moreover, they must demonstrate a distinct, significant and close connection to the issue at hand.⁸⁸ Claimants are also under an

⁸⁰ Swiss Civil Code, 10 Dec. 1907, No. 210, articles 60–79, available at: <https://www.admin.ch/opc/en/classified-compilation/19070042/index.html> (non-official English translation).

⁸¹ See Swiss Civil Code (note 80), article 60.

⁸² See Swiss Civil Code (note 80), article 75a.

⁸³ German, French and Italian are all official languages of the Swiss Confederation; see Fed. Const. (note 31), article 70 section 1 sentence 1 (defining ‘German, French and Italian’ as the Federation’s official languages).

⁸⁴ Articles of Association, article 3, available at: https://www.klimasenioren.ch/wp-content/uploads/2016/08/2023_Statuten_KlimaSeniorinnen-Schweiz_V2.pdf.

⁸⁵ Articles of Association (note 84), article 8 section 3.

⁸⁶ Articles of Association (note 84), article 8 sections 1 and 2, article 4 section 3.

⁸⁷ See the text in section 2.2 accompanying notes 70–73.

⁸⁸ See, e.g., Federal Act on Administrative Procedure (Administrative Procedure Act; APA), 20 December 1968, No. 172.021, article 48 section 1b & c,

obligation to establish that their interest in seeking a remedy is not only ‘worthy of protection’, but also has practical value in improving their specific legal or factual situation.⁸⁹ Anthropogenic climate change, by its very nature, affects everyone, making it difficult to prove that an individual or a group is uniquely affected, rather than sharing a generalised grievance with society as a whole.⁹⁰

On account of their members being female and on average 73 years old, *Verein KlimaSeniorinnen Schweiz* argued that its members are significantly and adversely affected by heatwaves occurring both more frequently and severely due to omissions by the Swiss federal authorities to reduce the country’s GHG emissions.⁹¹ Multiple lines of evidence in fact not only indicate a consistent and almost linear relationship between cumulative emissions of GHGs, above all CO₂, and projected global temperature change,⁹² but underscore that the risk of heatwaves exceeding the temperature level being harmful to human health increases disproportionately as a direct effect of the rise in

available at: <https://www.admin.ch/opc/en/classified-compilation/19680294/index.html> (non-official English translation); and Federal Act on the Federal Supreme Court (Federal Supreme Court Act, FCA), 17 June 2005, No. 173.110, article 89 section 1b & c, available at: <https://www.admin.ch/opc/fr/classified-compilation/20010204/index.html>.

⁸⁹ See note 99 and, e.g. Federal Supreme Court (note 13), decision 140 II 214 (2 April 2014), section 2.1 (stating that complainants are required to ‘have a specific relation to the matter in dispute . . . and derive a practical benefit from the annulment or amendment of the contested decision’; transl.).

⁹⁰ See, in more detail, Johannes Reich, ‘Litigating the commons’: *KlimaSeniorinnen als gerichtliche Durchsetzung der Verfassung der globalen Allmende* (2025) *Klima und Recht* [KlimR] section 3.

⁹¹ *Verein KlimaSeniorinnen Schweiz*, Begehren um Einstellung von Unterlassungen im Klimaschutz im Sinne von Art. 25a VwVG sowie Art. 6 Ziff. 1 und 13 EMRK [Request to halt omissions in climate protection pursuant to APA, article 25a and ECHR, article 6 and article 13 section 1], 25 November 2016, available at: https://www.klimaseniorinnen.ch/wp-content/uploads/2016/11/161124-Gesuch-um-Erlass-anfechtbarer-Verfuegung_final.pdf (German original), https://www.klimaseniorinnen.ch/wp-content/uploads/2016/10/161024_summary_swiss-climate-case_def.pdf (English summary) and https://www.klimaseniorinnen.ch/wp-content/uploads/2016/10/161024_synthese_action-en-justice_def.pdf (French summary) (thereinafter referred to as ‘*Verein KlimaSeniorinnen Schweiz*, Initial Request’), 47–54.

⁹² Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2014. Synthesis Report* (2015), 5 (according to which CO₂ accounts for around two-thirds of total GHG-emissions) and 8, available at: https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf; and *Federal Office for the Environment* (note 14), 6 (stating that CO₂ accounted for 78.5 percent of all of Switzerland’s GHG emissions).

average global temperature.⁹³ According to recent findings, the heatwaves of the summers of 2003 and 2015 resulted in an excess mortality of 5 to 7 percent in Swiss cities, with age being one of the main determining factors of heat vulnerability: 77 percent of the excess deaths were of people aged 75 years and older.⁹⁴ However, the evidence as to the specific vulnerability of women within this age group, as compared to men, appears less conclusive.⁹⁵

5.2 Object of Complaint: Overcoming Prohibition of Direct Constitutional Review by Challenging Administrative Inaction Rather Than Legislation

The Swiss Federal Constitution explicitly bars abstract review of acts of both Federal Parliament (the National Council and the Council of States, together referred to as the ‘Federal Assembly’) and the Federal Council (the executive branch of federal government), by stating that ‘[a]cts of the Federal Assembly or the Federal Council may not be challenged in the Federal Supreme Court.’⁹⁶ Unlike, for example, the 2021 *Neubauer* case before the German Federal Constitutional Court,⁹⁷ where the applicants argued that

⁹³ Erich M. Fischer & Reto Knutti, ‘Anthropogenic Contribution to Global Occurrence of Heavy-Precipitation and High-Temperature Extremes’ (2015) *Nature Climate Change* 560–64.

⁹⁴ Ana M. Vicedo-Cabrera, Martina S. Ragettli, Christian Schindler & Martin Rössli, ‘Excess mortality during the warm summer of 2015 in Switzerland’ (2016) *Swiss Medical Weekly* 146: w14379, 6 (DOI: <https://doi.org/10.4414/smww.2016.14379>); see also Martina S. Ragettli, Ana M. Vicedo-Cabrera, Christian Schindler & Martin Rössli, ‘Exploring the association between heat and mortality in Switzerland between 1995 and 2013’ (2017) *Environmental Research* 703–9.

⁹⁵ See Vicedo-Cabrera et al. (note 94), 6 (indicating a slightly, albeit hardly statistically significant, higher excess mortality of men); but see Jean-Marie Robine, Siu Lan K. Cheung, Sophie Le Roy, Herman Van Oyen, Clare Griffiths, Jean-Pierre Michel & François Richard Herrmann, ‘Death toll exceeded 70,000 in Europe during the summer of 2003’ (2008) *Comptes Rendus Biologies* 171, 174 (finding that the ‘female deaths represent 65% of the total number of the excess deaths’ during 2003 in different European countries).

⁹⁶ ‘[A]cts of the Federal Assembly or the Federal Council may not be challenged in the Federal Supreme Court’ Fed. Const (note 31), article 189 section 4 sentence 1 (official French version): ‘Les actes de l’Assemblée fédérale et du Conseil fédéral ne peuvent pas être portés devant le Tribunal fédéral’.

⁹⁷ See German Federal Constitutional Court, *Neubauer et al. v. Federal Republic of Germany*, Application No. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, and 1 BvR 288/20, 24 March 2021, available (in the Court’s English translation) at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html.

the climate targets in the Federal Climate Protection Act (KSG) violated their fundamental rights under the German Basic Law (Grundgesetz, GG), the *Verein KlimaSeniorinnen Schweiz* were barred from making the claim that the Federal CO₂ Act, any of its specific provisions, or other parts of federal law, failed to meet the requirements of specific guarantees of either the Federal Constitution or international law, including the ECHR. Faced with this obstacle, *Verein KlimaSeniorinnen Schweiz* had to find a different legal route. They argued that the Federal Council's failure to act – by not revising the existing federal climate legislation or by weakly implementing existing statutory provisions – amounted to an 'informal administrative act' by omission.⁹⁸

According to the Federal Administrative Procedure Act judicial review is, in principle, only granted against 'administrative acts' (French: *décisions*; German: *Verfügungen*), i.e. formal decisions (rulings) issued by administrative agencies on the basis of federal public law.⁹⁹ Deviating from the traditional principles of administrative procedural law and owing to the rights to a fair trial and to an effective remedy enshrined in the ECHR,¹⁰⁰ the Federal Administrative Procedure Act has provided for remedy against 'informal administrative acts' (French: *actes matériels*; German: *Realakte*) since 2007.¹⁰¹ Such 'informal administrative acts' are not formally notified in writing with a statement of reasons and information on legal remedies, but they have nonetheless the potential to infringe the rights of private individuals. According to the Federal Supreme Court's case law, not only a campaign by a federal agency to raise awareness of sexually transmitted diseases such as HIV/AIDS, but an administrative agency shutting down a specific rubbish collection point or the local police physically hindering a journalist to board a bus to prevent him from travelling to Davos to report on the World Economic Forum (WEF), all amount to such 'informal administrative acts'.¹⁰² Petitioners must, however, not only demonstrate that the act in

⁹⁸ *Verein KlimaSeniorinnen Schweiz*, Initial Request (note 91), 7–9, 100–110.

⁹⁹ See APA (note 88), article 5 and article 44.

¹⁰⁰ ECHR (note 1), article 6 and article 13; see also Fed. Const (note 31), article 29a.

¹⁰¹ See APA (note 88), article 25a.

¹⁰² See *inter alia* Federal Supreme Court (note 13), decision 143 I 336 (12 April 2017), sections 4.1–4.4 (finding that the closure of a specific rubbish collection point in a small municipality in the Swiss Alps amounts to an 'informal administrative act'), decision 130 I 369 (7 July 2004), section 6 (stating that a journalist who was physically prevented by local police from travelling to Davos to report on the World Economic Forum has a right to effective remedy), and decision 144

question infringed upon their ‘rights or obligations’ with ‘a certain degree of severity’, but that they were affected by the act in a specific and distinct manner compared to the general public.¹⁰³ If these conditions are met, the competent authority must issue a formal administrative act retroactively regarding the previous informal administrative act. This administrative act can then be appealed to the Federal Administrative Court.¹⁰⁴ In a nutshell, the Federal Administrative Procedure Act aims to grant judicial review in the absence of a formal ruling by an administrative agency by providing for a conditional right for an administrative act to be issued on previous ‘informal administrative acts’.

6. DOMESTIC PROCEEDINGS: DECLINING TO CONSIDER THE CASE ON ITS MERITS

6.1 Grounds of Complaint: Constitutional Principles and International Human Rights

In the domestic proceedings, *Verein KlimaSeniorinnen Schweiz* argued that the Federal Council failed to take the necessary steps to revise the allegedly too-lenient federal climate legislation, in particular the Federal CO₂ Act.¹⁰⁵ These ostensible omissions, according to the complaint, not only amounted to violations of the constitutional principles of precaution and environmental sustainability¹⁰⁶ but to infringements on the right to life and the right to respect

II 233 (15 June 2018), section 7.1 (holding that a rather explicit campaign by the Federal Office of Public Health, entitled ‘Love Life’, intended to prevent the spread of sexually transmitted diseases, constituted an ‘informal administrative act’); on the latter decision see Johannes Reich, ‘A Bigger Bang for a Buck’. Staatliche Warnungen und Empfehlungen zwischen Grundrechtsschutz, Kindeswohl und Aufmerksamkeitsökonomie, in Ruth Arnet et al. (eds), *Der Mensch als Mass* (Schulthess 2019), 185–99 available at: <https://doi.org/10.5167/uzh-170160>.

¹⁰³ See e.g. Federal Supreme Court (note 13), decision 144 II 233 (note 102), sections 7.1, 7.3.2 and 8.4.

¹⁰⁴ See APA (note 88), article 5 and article 44 in connection with Federal Act on the Federal Administrative Court (Administrative Court Act, ACA), 17 June 2005, No. 173.32, article 31, available at: <https://www.admin.ch/opc/fr/classified-compilation/20010206/index.html>.

¹⁰⁵ See *Verein KlimaSeniorinnen Schweiz*, Initial Request (note 91), 6–9.

¹⁰⁶ Fed. Const (note 31), article 73 and article 74 section 2 sentence 1.

for private and family life guaranteed by both the Federal Constitution¹⁰⁷ and the ECHR.¹⁰⁸

6.2 Federal Administration: Insisting on the Difference Between Legislation and the Administrative Process

Verein KlimaSeniorinnen Schweiz as well as four of its members as individual applicants filed their motion on 25 November 2016 with the Federal Council, the government department responsible for climate, energy, and the environment (i.e. the Federal Department of the Environment, Transport, Energy and Communications, DETEC), and two administrative agencies that report to DETEC (i.e. the Federal Office for the Environment and the Federal Office for Energy).¹⁰⁹ In its decision of 28 April 2017, DETEC stated that the aim of the petition was for the federal authorities to enact legislation.¹¹⁰ The purpose of the administrative process, however, DETEC reasoned, was to protect the rights of individuals, as the provision on ‘informal administrative acts’ explicitly emphasises.¹¹¹ DETEC therefore refused to consider the merits of the application, giving a statement of reasons of fewer than three pages.¹¹² DETEC held that the conditions set out in the Federal Administrative Procedure Act for issuing an administrative act regarding the alleged ‘informal administrative act’¹¹³ committed by the federal authorities – namely, failing to revise existing

¹⁰⁷ Fed. Const (note 31), article 10 section 1 and article 13 sentence 1.

¹⁰⁸ ECHR (note 1), article 2 and article 8; see *Verein KlimaSeniorinnen Schweiz*, Initial Request (note 91), 23–5, 61–91.

¹⁰⁹ See *Verein KlimaSeniorinnen Schweiz*, Initial Request (note 91), 1, 10–11.

¹¹⁰ Eidgenössische Departement für Umwelt, Verkehr, Energie und Kommunikation (UVEK) [Federal Department of the Environment, Transport, Energy and Communications (DETEC)], Verfügung [Administrative Decision], 25 April 2017 [hereinafter referred to as ‘DETEC, Administrative Decision’], 13–4, available at: https://ainees-climat.ch/wp-content/uploads/2019/01/Verfu%C3%88gung_UVEK_KlimaSeniorinnen.pdf (in German) and https://www.klimaseniorinnen.ch/wp-content/uploads/2017/11/Verfuegung_UVEK_Abschnitt_C_English.pdf (English summary).

¹¹¹ DETEC, Administrative Decision (note 111), 14; on ‘informal administrative acts’ see the text in section 5.2 between notes 109 and 116.

¹¹² See DETEC, Administrative Decision (note 111), 13–15 (reasoning), 16 (decision).

¹¹³ On these criteria see DETEC, Administrative Decision (note 111), section 5.2.

federal climate legislation and implementing the statutory provisions too leniently – were not met.¹¹⁴

6.3 Federal Administrative Court: Climate Change Affects Everyone, Yet No One in Particular

After *Verein KlimaSeniorinnen Schweiz* and four of its members filed an appeal against the ruling of the DETEC before the Federal Administrative Court, the Court handed down its judgment on 27 November 2018.¹¹⁵ The Court emphasised that, in order to avoid giving rise to an *actio popularis*, judicial review of ‘informal administrative acts’ must be subject to the condition that they affect the rights or obligations of the applicants in a specific and particular manner.¹¹⁶ Against this backdrop, the appellate court noted that the ‘effects of climate change on humans, animals and plants are (...) of a general nature’.¹¹⁷ Although the Federal Administrative Court conceded that ‘not everyone’ was affected by the consequences of climate change ‘to the same extent’,¹¹⁸ a ‘brief overview of possible effects of climate change’ was sufficient for the Court to conclude ‘that the group of women over 75 years of age’ akin to the members of *Verein KlimaSeniorinnen Schweiz* were ‘not particularly affected by the effects of climate change’. Even though this conclusion appears to be inconclusive (see section 6.5), the Federal Administrative Court relied on it to dismiss the appeal and uphold DETEC’s decision.¹¹⁹

¹¹⁴ See DETEC, Administrative Decision (note 111), 16.

¹¹⁵ See Federal Administrative Court, decision A-2992/2017 (note 12).

¹¹⁶ See Federal Administrative Court, decision A-2992/2017 (note 12), section 6; on these criteria see the text in the section 5.2 between notes 109 and 116.

¹¹⁷ Federal Administrative Court, decision A-2992/2017 (note 12), section 7.4.2 (transl.: ‘*Die Auswirkungen des Klimawandels auf Menschen, Tiere und Pflanzen sind mithin allgemeiner Art, auch wenn nicht alle gleichermassen betroffen sind.*’); for a critical assessment of this approach see Johannes Reich, ‘Abwendung der Klimakatastrophe durch Gerichte?’ (2019) *Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht* 413, available at: <https://t.uzh.ch/lpZ>.

¹¹⁸ Federal Administrative Court, decision A-2992/2017 (note 12), section 7.4.2 (transl.; German original: ‘... *auch wenn nicht alle gleichermassen betroffen sind.*’).

¹¹⁹ See Federal Administrative Court, decision A-2992/2017 (note 12), 24; for an assessment see Meret Rehmann, ‘Bundesverwaltungsgericht, Abteilung I, Urteil A-2992/2017 vom 27. November 2018 Verein KlimaSeniorinnen Schweiz et al. gegen Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation UVEK, Verfügung über Realakte im Zusammenhang mit dem Klimaschutz’ [Case Note], (2019) *Aktuelle Juristische Praxis* 653, 655–9.

6.4 Federal Supreme Court: (Mis-)Reading Science to Conclude That ‘There is Still Some Time’ to Avoid a ‘> 1.5/2.0°C-World’

On 21 January 2019, *Verein KlimaSeniorinnen Schweiz* and four of its members filed an appeal in matters of public law against the Federal Administrative Court with the Federal Supreme Court.¹²⁰ In its judgment of 5 May 2020, Switzerland’s apex court first emphasised that the Federal Constitution offered a multitude of instruments to initiate and shape federal legislation, ranging from the right to elect members to the two chambers of the Federal Parliament to the right to initiate a popular initiative to amend the Federal Constitution.¹²¹ Turning to the question whether the alleged omissions by federal authorities indeed amounted to an ‘informal administrative act’, the Federal Supreme Court based its reasoning on the Intergovernmental Panel on Climate Change’s (IPCC) ‘Global Warming of 1.5°C’.¹²² According to the Court’s reading of the IPCC’s special report, an ‘increase in the global average’ in excess of 1.5°C as defined by the Paris Agreement would only occur ‘around the year 2040’.¹²³

This reasoning led the Court to conclude ‘there is still some time to prevent global warming’ to rise beyond the threshold defined by the Paris Agreement.¹²⁴ This led the Court to conclude that the applicants’ rights weren’t affected to the extent required by the Federal Administrative Procedure Act for them to have the right to the issuance of an administrative act on the alleged omissions by federal authorities that would have opened the avenue to judicial review.¹²⁵ Although such a reading of climate science is highly questionable (see section 6.5),¹²⁶ the Court nevertheless inferred from it that the alleged omissions by the federal authorities would ‘at the present time’ fail to impair

¹²⁰ Federal Supreme Court, decision 146 I 145 (note 13).

¹²¹ Federal Supreme Court, decision 146 I 145 (note 13), section 4.3.

¹²² Intergovernmental Panel on Climate Change [IPCC], Global Warming of 1.5°C (2018), available at: <https://www.ipcc.ch/sr15/>; see Federal Supreme Court, decision 146 I 145 (note 13), section 5.3; on ‘informal administrative acts’ see section 5.2 between notes 109 and 116.

¹²³ Federal Supreme Court, decision 146 I 145 (note 13), section 5.3 (transl.; German original: ‘*Der Weltklimarat ... kommt ... zum Schluss, die globale Erwärmung werde ungefähr um das Jahr 2040 ... 1,5 Grad Celsius erreichen ...*’).

¹²⁴ Federal Supreme Court, decision 146 I 145 (note 13), section 5.3 (transl.; German original: ‘*Es wird davon ausgegangen, dass für die Abwendung einer diesen Wert übersteigenden Erderwärmung noch ein gewisser Zeitraum zur Verfügung steht*’).

¹²⁵ On these criteria set out, see Federal Supreme Court, decision 146 I 145 (note 13), section 5.2.

¹²⁶ For a critical and more detailed assessment of the Federal Supreme Court’s reasoning see Reich (note 13) 497–507.

both the complainants' right to life and the right to respect for private and family life to the extent required by the Administrative Procedure Act¹²⁷ in order to vindicate legal remedy.¹²⁸ For these reasons, the encroachment of individual rights provoked by the alleged 'informal administrative acts' (omissions) failed to reach the threshold set forth by federal statutory law according to the Court that would have opened the avenue to judicial review on the merits.¹²⁹ Consequently, the Federal Supreme Court upheld the decisions by the Federal Administrative Court holding that the DETEC was right not to consider the application by *Verein KlimaSeniorinnen Schweiz* and four of its members in their individual capacities.¹³⁰

6.5 Conclusion: Non-Interference in the Political Sphere as a 'Passive Virtue' of a Court in a Direct Democracy?

On behalf of the Federal Council and the Federal Administration, DETEC thus refused to issue a formal administrative act on the application. The two courts involved in the domestic proceedings both upheld DETEC's finding and declined to consider the application on its merits with regard to both *Verein KlimaSeniorinnen Schweiz* and the four individual applicants. Neither of the judgments handed down by the two courts is, however, entirely convincing. The Federal Administrative Court's rather blunt argument, that because climate change affects and will affect everyone, no one will be *particularly* affected by its consequences (see section 6.3), defies logic.¹³¹ In the same vein, all people on Earth are exposed to *some* harmful ultraviolet light, but those who reside near the poles under a depleted ozone layer are *particularly* affected by such radiation. The complainants also carefully explained why the health effects of climate change vary considerably according to age

¹²⁷ See APA (note 88), article 25a.

¹²⁸ Federal Supreme Court, decision 146 I 145 (note 13), section 5.3 (transl.; German original: '*Unter den genannten Umständen erscheint das Recht auf Leben der Beschwerdeführerinnen (...) durch die gerügten Unterlassungen im heutigen Zeitpunkt nicht in einem Ausmass bedroht, dass von einem hinreichenden Berührtsein in eigenen Rechten im Sinne von Art. 25a VwVG [APA] gesprochen werden könnte (...). Dasselbe gilt für ihr Privat- und Familienleben sowie ihre Wohnung (...).*').

¹²⁹ On these criteria set out, see Federal Supreme Court, decision 146 I 145 (note 13), section 5.2; Federal Supreme Court, decision 146 I 145 (note 13), section 5.3; on these criteria see the text in the section 5.2 between notes 109 and 116.

¹³⁰ See Federal Supreme Court, decision 146 I 145 (note 13), section 6.2.

¹³¹ Reich (note 104) 413–4.

and gender. The Federal Administrative Court did not address this in any substantive way.

Similarly, the Federal Supreme Court's reading of the physical basis of climate change, which culminates in the determination that there remains 'some time' to avert a rise in the global average temperature above the 1.5°C threshold, is not persuasive either (see section 6.4).¹³² To begin with, given that the average global temperature increased by 0.9°C between 1864 and 2016, while the temperature in Switzerland rose by 2.0°C,¹³³ it appears inconsistent from a human rights perspective to identify the global rather than the local surface temperature as the criterion to assess whether an infringement of the applicants' *individual* rights occurred. What is more, the Court's reading fails to take into account that, due to the high heat capacity of the Earth system, an average of 10.2 years elapses between the emission of CO₂ (cause) and its maximum effect in terms of the resulting global warming (effect), with a 90 percent probability range of 6.6 to 30.7 years.¹³⁴ The Federal Supreme Court's reasoning does not appear to have taken into account the fact that reductions in CO₂ emissions only take full effect after a delay of around a decade.

In view of these shortcomings, it is insightful to consider the political process running alongside the administrative and judicial proceedings. The initial motion was filed on 25 November 2016 (see section 6.2), whereas the judgment of the Federal Supreme Court, given on 5 May 2020, marked the end of the domestic proceedings (see section 6.4). Between 31 August and 30 November 2016, the Federal Council held a public consultation on amending the Federal CO₂ Act.¹³⁵ From December 2018 until September 2020, the legislation was subject to fierce debate in both houses of Federal Parliament until a compromise that found the support of a majority in both houses was reached on 25 September 2020.¹³⁶ Within the 100-day timeframe, the

¹³² For a critical and more detailed assessment of the Federal Supreme Court's reasoning see Reich (note 13) 497–507.

¹³³ Federal Office for the Environment, Switzerland's Seventh National Communication and Third Biennial Report under the UNFCCC. Fourth National Communication under the Kyoto Protocol to the UNFCCC (2018) 11, available at: www.bafu.admin.ch/en/climate-reporting.

¹³⁴ On this insight see Katharine L. Ricke & Ken Caldeira, 'Maximum warming occurs about one decade after a carbon dioxide emission' (2014) *Environmental Research Letters* 9 124002, 3.

¹³⁵ See Federal Council, *'Message du 1er décembre 2017 relatif à la révision totale de la loi sur le CO₂ pour la période postérieure à 2020'* [Report of 1 December 2017 on the total revision of the CO₂ Act for the period after 2020], Federal Gazette 2018 229–371, 230, 268.

¹³⁶ See Federal Gazette 2020 7607 (decision of 25 September 2020).

requisite 50,000 signatures of Swiss citizens¹³⁷ were collected to initiate a referendum on the bill.¹³⁸ Following wide-ranging debates, the bill failed to garner majority support at the ballot box on 13 June 2021, albeit by a narrow margin (see section 4).¹³⁹ In addition, various civil society organisations collected signatures for the popular initiative ‘For a healthy climate (Glacier Initiative)’ between 30 April 2019 and 30 October 2020.¹⁴⁰ The initiative, aiming to make the net zero target by 2050 and phasing-out of fossil fuels from 2050 onwards part of the Federal Constitution, resulted in the creation of the Federal Climate Protection Act, which was approved in a referendum on 18 June 2023.¹⁴¹

In view of this political backdrop, had the Federal Administrative Court or the Federal Supreme Court directed DETEC to address the merits of the motion brought by *Verein KlimaSeniorinnen Schweiz* and four individual claimants, the courts would have been bound, at a subsequent stage of the proceedings, to indirectly rule on whether the legislative projects – which were the subject of intense debate in Parliament and among the general public at the time – complied with the requirements of both the Federal Constitution and the ECHR. In the absence of the authority to evaluate federal legislation in an abstract manner (see section 5.2), it is conceivable that the courts would have been subject to intense and pervasive condemnation from the political branches of government in such a scenario. From this standpoint, the rulings of the Federal Administrative Court and the Federal Supreme Court were also aimed at insulating the institutions from such pressures, and thus amount to illustrations of *passive virtues*.¹⁴²

¹³⁷ See Fed. Const. (note 31), article 141 section 1a.

¹³⁸ See Federal Gazette 2021 462.

¹³⁹ Reich (note 42) 273–4 (with further references).

¹⁴⁰ See Federal Gazette 2019 3075.

¹⁴¹ See Reich & Boss (note 53) 153.

¹⁴² See Alexander Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (2nd edition, Yale University Press 1962), 113–98 (coining the phrase ‘passive virtues’ with regard to the United States Supreme Court).

7. EUROPEAN COURT OF HUMAN RIGHTS: ESTABLISHING A HUMAN RIGHTS CLAIM TO DUE PROCESS IN DOMESTIC CLIMATE CHANGE MITIGATION POLICIES

7.1 Landmark Ruling without Prescriptive Remedies and No Individuals as ‘Victims’

On 26 November 2020, *Verein KlimaSeniorinnen Schweiz* and four of its members filed an application against Switzerland with the ECtHR.¹⁴³ The number of third-party interventions – a staggering 23 in all, eight of them by governments of Council of Europe member states¹⁴⁴ – testifies to the importance attached to the proceedings. In its 260-page judgment of 9 April 2024, the ECtHR found Switzerland, the respondent state, to be in violation of both article 8 (right to respect for private and family life) and article 6 (right to access to court and to a fair trial) of the ECHR.¹⁴⁵ The Court reached its finding, according to which Switzerland failed to comply with the positive obligations deriving from ECHR, article 8, ‘encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life’,¹⁴⁶ with a majority of 16 votes to one.¹⁴⁷ With regard to Switzerland’s failure to comply with the right to access to court and to a fair trial as enshrined in ECHR, article 6, the Court’s decision was unanimous.¹⁴⁸ Against this backdrop, the Court deemed it ‘not necessary’ to examine whether the right to life according to ECHR, article 2 was applicable.¹⁴⁹

Two features of the judgment stand out. First, the ECtHR granted the association *Verein KlimaSeniorinnen Schweiz* *locus standi* (standing) to bring forward its claims under ECHR, articles 2 and 8, while *refusing* to grant the

¹⁴³ See ECtHR, *KlimaSeniorinnen* (note 2), para. 1.

¹⁴⁴ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 366–409 (the governments of Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania and Slovakia all intervened as did, among others, the United Nations High Commissioner for Human Rights, the United Nations Special Rapporteurs on toxics and human rights, on human rights and the environment, and the Independent Expert on the enjoyment of all human rights by older persons).

¹⁴⁵ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 574 and 640.

¹⁴⁶ ECtHR, *KlimaSeniorinnen* (note 2), para. 519.

¹⁴⁷ ECtHR, *KlimaSeniorinnen* (note 2), holding no. 7.

¹⁴⁸ ECtHR, *KlimaSeniorinnen* (note 2), holding no. 11.

¹⁴⁹ ECtHR, *KlimaSeniorinnen* (note 2), holding no. 6.

four individual applicants victim status with regard to the same provisions.¹⁵⁰ Moreover, the Court, despite ruling against Switzerland, deemed itself ‘unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the (...) judgment’.¹⁵¹ Amid ‘the complexity and the nature of the issues involved’, the ECtHR instead left it ‘to the Committee of Ministers to supervise (...) the adoption of measures aimed at ensuring that the domestic authorities comply with Convention requirements, as clarified in the (...) judgment’.¹⁵² In short, the Court granted standing to an association, but not to individuals, in a human rights case, and was unable to identify concrete remedies. The Committee of Ministers of the CoE, a body composed of the Ministers for Foreign Affairs of the 46 member states or their Permanent Representatives in Strasbourg, is, according to the ECHR, responsible ‘for the supervision of the execution of a final judgment’ of the ECtHR.¹⁵³

7.2 Locus Standi and Victim Status: The ‘Special Features of Climate Change’ as Grounds to Establish Standing for Representative Associations with Relevant Expertise

The ECtHR may, according to ECHR, article 34, ‘receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto’.¹⁵⁴ When determining whether *Verein KlimaSeniorinnen Schweiz* as an association and/or the four individual claimants, all members of *Verein KlimaSeniorinnen Schweiz*, had standing with regard to the violation of ECHR, articles 2 and 8, the Court time and again reiterated the ‘specific features’ of climate change and climate-change litigation.¹⁵⁵ Vaguely echoing a similar observation by the Federal Administrative Court (see sections 5.2 and 5.4), the ECtHR held ‘the number of persons affected’ by the consequences of anthropogenically-induced climate change to be ‘indefinite’.¹⁵⁶

These observations led the Court to conclude that in order for an *individual* to qualify as a ‘victim’ with regard to ‘complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change’,

¹⁵⁰ ECtHR, *KlimaSeniorinnen* (note 2), paras. 526 and 535.

¹⁵¹ ECtHR, *KlimaSeniorinnen* (note 2), para. 657.

¹⁵² ECtHR, *KlimaSeniorinnen* (note 2), para. 657.

¹⁵³ ECHR (note 1), article 46 section 3.

¹⁵⁴ ECHR (note 1), article 34 sentence 1.

¹⁵⁵ See, *inter alia*, ECtHR, *KlimaSeniorinnen* (note 2), paras. 501 and 502, but also 538, 547 and 554.

¹⁵⁶ ECtHR, *KlimaSeniorinnen* (note 2), para. 479.

the applicant in question not only ‘must be subject to a high intensity of exposure to the adverse effects of climate change’ but there also ‘must be a pressing need to ensure the applicant’s individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm’.¹⁵⁷ The four individual applicants *failed* to meet this ‘high threshold’,¹⁵⁸ according to the Court, as the critical medical condition the applicants linked to heatwaves (see section 5.2) could ‘be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation’.¹⁵⁹

With respect to *Verein KlimaSeniorinnen Schweiz*’s standing, the Court pointed to its own case law granting associations standing, the collective and intergenerational dimensions of climate change, the practical considerations to bring a case as an organisation (on this see also section 5.1), the widespread ratification of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters¹⁶⁰ by most members states of the CoE, and an ‘evolution in contemporary society’ with regard to ‘the importance of associations to litigate issues of climate change on behalf of affected persons’.¹⁶¹ Against this backdrop, the ECtHR devised the following ‘test for the standing of associations in climate-change litigation under the Convention’.¹⁶² In order to enjoy standing, an association must be:

- a) lawfully established in the jurisdiction concerned or have standing to act there;
- b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and
- c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.¹⁶³

¹⁵⁷ ECtHR, *KlimaSeniorinnen* (note 2), para. 487.

¹⁵⁸ ECtHR, *KlimaSeniorinnen* (note 2), para. 533.

¹⁵⁹ ECtHR, *KlimaSeniorinnen* (note 2), para. 533.

¹⁶⁰ Convention sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement (Convention d'Aarhus), Aarhus (Denmark), 25 June 1998, in force 1 June 2014; ratified by Switzerland on 27 September 2013; No. 0.814.07. Available (in its authentic French version) at: <https://www.fedlex.admin.ch/eli/cc/2014/235/fr>.

¹⁶¹ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 476, 489, 494 and 497.

¹⁶² ECtHR, *KlimaSeniorinnen* (note 2), para. 501.

¹⁶³ ECtHR, *KlimaSeniorinnen* (note 2), para. 502.

The Court held that *Verein KlimaSeniorinnen Schweiz* met all of the noted criteria and was thus granted *locus standi* to bring its claims under ECHR, articles 6 and 8.¹⁶⁴

7.3 Violation of the Positive Obligations Deriving from the Right to Privacy and Family Life

With regard to ECHR, article 8 ('Everyone has the right to respect for his private and family life, his home and his correspondence'), the Court's previous environmental case law referred to situations in which harm (for example, toxic waste, pollution) inflicted on applicants may be traced directly to a *specific source*, such as an industrial steelworks complex or landfill, located within the jurisdiction of a member state of the CoE.¹⁶⁵ The ECtHR found states that consistently failed to limit hazardous emissions of sources to the detriment of the local population to be in violation of 'positive obligations' derived from the ECHR, especially articles 2 and 8.¹⁶⁶ The Court acknowledged that in these previous cases there was a direct link 'between a source of harm and those affected by the harm', and the measures necessary to alleviate the harm were 'identifiable and available to be applied at the source of the harm'.¹⁶⁷

This is different when compared to the consequences of anthropogenic climate change.¹⁶⁸ CO₂ accounts for two-thirds of all GHGs emitted.¹⁶⁹ Multiple lines of evidence indicate a causal and 'almost linear relationship between cumulative CO₂ emissions and projected global temperature change'.¹⁷⁰ Each tonne of CO₂ emitted into the atmosphere anywhere on Earth at any given time thus had, has, and will have an almost identical effect on the average global temperature. Climate change induced by increased atmospheric CO₂ concentration 'remains largely irreversible for 1,000 years after emissions

¹⁶⁴ See ECtHR, *KlimaSeniorinnen* (note 2), para. 524.

¹⁶⁵ Johannes Reich, 'KlimaSeniorinnen and the Choice Between Imperfect Options: Incorporating International Climate Change Law to Maintain the ECHR's Relevance Amid the Climate Crisis' in Maxim Bönnemann & Maria Antonia Tigre (eds.), *The Transformation of European Climate Litigation* (Verfassungsbooks 2024), 41, 44.

¹⁶⁶ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 538–40; for an instructive example see ECtHR, *Cordella and Others v. Italy*, Application nos. 54414/13 and 54264/15, 24 January 2019.

¹⁶⁷ See ECtHR, *KlimaSeniorinnen* (note 2), para. 415.

¹⁶⁸ On the following see Reich (note 168) 44.

¹⁶⁹ IPCC (note 92) 5; Federal Office for the Environment (note 14) 6.

¹⁷⁰ IPCC (note 92) 8.

stop'.¹⁷¹ The rise in the global average temperature is therefore, as the ECtHR acknowledged,¹⁷² essentially determined by the *cumulative* level of all GHG emissions accrued over centuries, to the effect that '[m]ost aspects of climate change will persist for many centuries even if emissions of CO₂ are stopped'.¹⁷³

The ECtHR therefore drew 'some inspiration from the principles set out in the Court's existing case law',¹⁷⁴ while stressing 'the specificity of climate-change disputes, in comparison with classic environmental cases'.¹⁷⁵ After reviewing the relevant scientific evidence at length, the Court concluded that 'anthropogenic climate change' not only 'exists' but 'that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention', and that member states are 'capable of taking measures to effectively address' the challenge.¹⁷⁶ On that basis, the Court stressed that a sufficiently severe risk to the rights protected under ECHR, article 8 is enough to create a positive obligation for governments to take measures with regard to potential harmful activities.¹⁷⁷

Based on the principle of 'common but differentiated responsibilities and respective capabilities' derived from the UNFCCC,¹⁷⁸ the ECtHR held that Switzerland was under an obligation to take 'reasonable measures' even if these would not prevent the harm in question from occurring.¹⁷⁹ Taking into account the broad choice of instruments to mitigate anthropogenically induced climate change and the margin of appreciation member states enjoy under the Convention, the Court sketched a five-pronged test to assess whether domestic climate mitigation policies comply with the positive obligations set forth by

¹⁷¹ Susan Solomon, Gian-Kasper Plattner, Reto Knutti & Pierre Friedlingstein, 'Irreversible Climate Change due to Carbon Dioxide Emissions' (2009) 106:6 *Proceedings of the National Academy of Sciences* 1704.

¹⁷² See ECtHR, *KlimaSeniorinnen* (note 2), paras. 416–17, 425, 439.

¹⁷³ IPCC, 'Summary for Policymakers. Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change' 27, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_SPM_FINAL.pdf.

¹⁷⁴ ECtHR, *KlimaSeniorinnen* (note 2), para. 422.

¹⁷⁵ ECtHR, *KlimaSeniorinnen* (note 2), para. 423 and paras. 414–21.

¹⁷⁶ ECtHR, *KlimaSeniorinnen* (note 2), para. 436.

¹⁷⁷ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 418–20, 425, 435, 437.

¹⁷⁸ UNFCCC (note 45), article 3 clause 1.

¹⁷⁹ ECtHR, *KlimaSeniorinnen* (note 2), paras. 441–2, 444, 571 (without elaborating further what exactly the principle and its different parts – 'common' as opposed to 'differentiated' – entail).

ECHR, article 8.¹⁸⁰ According to this test (and in addition to providing relevant information to the public),¹⁸¹ states are required to:

- a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, 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 (...);
- d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and
- e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.¹⁸²

The Court also stressed the duty that is incumbent on CoE member states to allow for *transparency* regarding ‘the relevant regulations and measures to tackle climate change’ as well as ensuring that the necessary *procedures* are in place to consider ‘the views of the public’ on ‘the relevant regulations and measures, or the absence thereof’.¹⁸³

The Court found that Switzerland failed to meet these criteria in various ways. There was, the Court concluded, an absence of relevant legislation after the unsuccessful revision of the Federal CO₂ Act (see section 4).¹⁸⁴ Regardless of such legislative ‘lacunae’,¹⁸⁵ the Court noted that Switzerland proved unable to meet its (rather modest) previous reduction target (see section 4) and abstained from explicitly quantifying its national GHG emissions limitations, ‘through a carbon budget or otherwise’.¹⁸⁶ For these reasons, the Court found Switzerland to be in violation of ECHR, article 8.¹⁸⁷ In view of its finding that Switzerland failed to comply with ECHR, article 8, the Court deemed it

¹⁸⁰ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 541–8.

¹⁸¹ See ECtHR, *KlimaSeniorinnen* (note 2), para. 554.

¹⁸² ECtHR, *KlimaSeniorinnen* (note 2), para. 550.

¹⁸³ ECtHR, *KlimaSeniorinnen* (note 2), para. 554.

¹⁸⁴ ECtHR, *KlimaSeniorinnen* (note 2), paras. 560–62, 573.

¹⁸⁵ ECtHR, *KlimaSeniorinnen* (note 2), paras. 562 and 573.

¹⁸⁶ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 558–9 and 573.

¹⁸⁷ ECtHR, *KlimaSeniorinnen* (note 2), para. 574.

‘unnecessary’ to determine whether the threshold of an infringement of the right to life under ECHR, article 2, had been met.¹⁸⁸

Accordingly, the Court derived from ECHR, article 8, in connection with the 2015 Paris Agreement, above all a duty to initiate comprehensive government planning arrangements to mitigate the risks posed by the effects of anthropogenic climate change to the private and family lives of individuals within the scope of the ECHR. From this perspective, ECHR, article 8 imposes a specific *duty of care (due diligence)* on CoE member states with regard to adapting to and mitigating climate change. While the Court set out the process of the governmental action to be taken in relatively high detail (e.g. drawing up a carbon budget, setting long-term targets, defining interim targets etc.),¹⁸⁹ the judgment, despite its considerable length, largely remains silent on the specific *substance* of the targets that states must achieve to comply with ECHR, article 8, but instead emphasises the importance of transparency and the obligation to provide for procedural avenues through which the views of those affected by the relevant matter can be taken into account.¹⁹⁰

This *discrepancy between substance and procedure* mirrors the idea that also underpins the ‘Nationally Determined Contributions’ (NDCs)¹⁹¹ in the Paris Agreement, namely that a transparent process, once initiated and organised around intermediate goals, *generates its own logic*, and is therefore bound to yield results with regard to reducing GHG emissions, despite the ambiguous nature of the obligations shaping the desired outcomes. From this perspective, what might be identified as due diligence obligations derived from ECHR, article 8, turn out to be, first and foremost, procedural obligations in the sense that it conveys a right to compel CoE member states *to establish, maintain and continually adapt structured governmental and administrative planning and procedures to mitigate climate change*. Or, to put it more succinctly, the ECHR thus enshrines *a right to an adequate and due procedure* in the domain of climate change law.¹⁹²

¹⁸⁸ See ECtHR, *KlimaSeniorinnen* (note 2), para. 536.

¹⁸⁹ ECtHR, *KlimaSeniorinnen* (note 2), para. 550.

¹⁹⁰ ECtHR, *KlimaSeniorinnen* (note 2), para. 554.

¹⁹¹ Cf Paris Agreement (note 47), article 4 section 2.

¹⁹² This procedural approach was confirmed in the ECtHR’s second merits judgment on the nexus between human rights and climate change in the case of *Greenpeace Nordic and Others v. Norway*, handed down on 28 October 2025. The case concerned the approval process for fossil fuel activities in the Barents Sea. In that regard, the Court held that in the context of fossil fuel projects, the State bears a procedural obligation under Article 8, ECHR to conduct an ‘adequate, timely and comprehensive environmental impact assessment in good faith and based on the best available science’ including a quantification of the anticipated

7.4 Violation of the Right of Access to Court and to a Fair Trial

ECHR, article 6(1), in its first sentence, provides that ‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’ in ‘the determination of his civil rights and obligations’. With regard to this right of access to court and to a fair trial, the Court noted that ‘the applicants’ action instituted at the domestic level largely concerned requests for legislative and regulatory action’.¹⁹³ Such ‘policy decisions’ being ‘subject to the relevant democratic processes’ would thus fall outside the scope of ECHR, article 6.¹⁹⁴ However, *Verein KlimaSeniorinnen Schweiz* and the individual applicants also sought to compel the domestic authorities to adequately implement *existing* mitigation measures (see sections 5.2, 6.1 and 6.2).¹⁹⁵ The Court further reiterated (see section 7.3) ‘the important role of associations in defending specific causes in the sphere of environmental protection’.¹⁹⁶ Although the claims brought forward were subject to public-law proceedings at the domestic level, the Court still qualified the rights in question as ‘civil rights’ in the meaning of ECHR, article 6(1), in line with previous case-law as the outcome of the proceedings would interfere with the property and lifestyles of the applicants.¹⁹⁷ Given the violation of ECHR, article 8 (see section 7.3), the Court, as a consequence, stressed that, based on ECHR, article 6, a requirement exists for ‘an adequate corrective action for the alleged failures and omissions on the part of the authorities in the field of climate change’ under such

GHG emissions, which also must account for the downstream emissions occurring from the burning of the extracted fossil fuels. Further than that, ‘at the level of the public authorities, there must be an assessment of whether the activity is compatible with their obligations under national and international law to take effective measures against the adverse effects of climate change’ and ‘informed public consultation must take place at a time when all options are still open and when pollution can realistically be prevented at source’, see European Court of Human Rights (sitting as a Chamber), *Greenpeace Nordic and Others v. Norway*, Application no. 34068/21, 28 October 2025, paras 317–9; see also on this “proceduralisation” Johannes Reich, ‘Urteil des Europäischen Gerichtshofs für Menschenrechte in Sachen Verein KlimaSeniorinnen Schweiz – ein Fanal “gerichtlichen Aktivismus”’ (2026) *Juristische Blätter [JBL]* (forthcoming) p. 22.

¹⁹³ ECtHR, *KlimaSeniorinnen* (note 2), para. 615.

¹⁹⁴ ECtHR, *KlimaSeniorinnen* (note 2), paras. 615–16.

¹⁹⁵ See also ECtHR, *KlimaSeniorinnen* (note 2), paras. 614 and 621.

¹⁹⁶ ECtHR, *KlimaSeniorinnen* (note 2), para. 622.

¹⁹⁷ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 597–602, 621–2.

circumstances.¹⁹⁸ The Court therefore held that ECHR, article 6 applied to the application brought by *Verein KlimaSeniorinnen Schweiz* but not to the ones brought by the individual applicants as the latter lacked standing with respect to ECHR, article 8.¹⁹⁹ As neither the Federal Administrative Court (see section 6.3) nor the Federal Supreme Court (see section 6.4) reviewed the case on its merits, the Court, stressing ‘the key role which domestic courts have played and will play in climate-change litigation’,²⁰⁰ found Switzerland in violation of ECHR, article 6.²⁰¹

8. FEDERAL COUNCIL AND FEDERAL ASSEMBLY: TIMING AND DIRECT DEMOCRACY AS REASONS TO LEVEL HARSH CRITICISM AT THE ECtHR’S JUDGMENT

In the wake of *KlimaSeniorinnen*, both chambers of Switzerland’s Federal Parliament (Federal Assembly) – i.e. the Council of State and the National Council – adopted declarations stating that the judgment exceeded ‘the limits of dynamic interpretation’, and that the ECtHR exposes itself ‘to the reproach of exercising inappropriate and inadmissible judicial activism’ and thus weakens not only its own legitimacy but that ‘of the effective protection of human rights in Europe’ as a whole.²⁰² The Federal Council, as (according to the Federal Constitution) the federal authority representing Switzerland in foreign affairs,²⁰³ criticised the ‘wide interpretation of the ECHR by the ECtHR’ and voiced its opinion that, in view of the revised Federal CO₂ Act, in effect since

¹⁹⁸ ECtHR, *KlimaSeniorinnen* (note 2), para. 621; see also *ibid.*, para 644 (holding that ECHR, article 13, i.e. the right to an effective remedy, is ‘being absorbed by the more stringent requirements’ of ECHR, article 6).

¹⁹⁹ ECtHR, *KlimaSeniorinnen* (note 2), paras. 623–5.

²⁰⁰ See ECtHR, *KlimaSeniorinnen* (note 2), para. 639.

²⁰¹ See ECtHR, *KlimaSeniorinnen* (note 2), paras. 629–40.

²⁰² See Déclaration du Conseil des Etats. Arrêt de la CEDH ‘Verein KlimaSeniorinnen Schweiz et autres c. Suisse’ (23 May 2024), No 24.053 (transl.), available at: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20240053>; and Déclaration du Conseil national. Arrêt de la CEDH ‘Verein KlimaSeniorinnen Schweiz et autres c. Suisse’ (29 May 2024), No 24.054 (transl.), available at: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20240054>.

²⁰³ Fed. Const (note 31), article 184 section 1 (official French version): ‘Le Conseil fédéral (...) représente la Suisse à l’étranger’.

1 January 2025 (see section 4), Switzerland in the meantime complies with ‘the climate policy requirements of the judgment’.²⁰⁴

The critical stance taken by the legislative and executive branches of the Swiss federal government is partly due to the fact that the ECtHR chose 14 February 2024 as the cutoff date for its assessment of Switzerland’s climate policy.²⁰⁵ This was after the referendum of 18 June 2023 on the Federal Climate Protection Act, which remedied some of the legislative ‘lacunae’ identified by the ECtHR (see sections 4 and 7.3). On 15 March 2024, the revised Federal CO₂ Act was adopted by the Federal Parliament. Both federal statutes entered into force on 1 January 2025 (see section 4).

Another, more fundamental reason for the harsh reaction may lie in the *specific concept of separation of powers underpinning the Swiss Federal Constitution* (see section 3), mirrored not only in the cautious approach employed by both the Federal Supreme Court and the Federal Administrative Court in the relevant proceedings (see sections 6.2–6.3), but in the trial-and-error approach to legislation inherent in the slow-working mechanism of direct democracy (see section 3). On 14 February 2024, the omissions in Swiss climate policy had not yet been remedied, but such remedies were well under way, not in spite of but *because* of direct democracy, since the Federal Climate Protection Act is rooted in a popular initiative.²⁰⁶ Among other things, the ECtHR, while taking note of the Climate Protection Act not yet in force, took issue with the lacuna persisting for the time period between 2025 and 2030 left unregulated in both the unrevised CO₂ Act and the new Climate Protection Act, as well as with the fact that concrete measures under the CO₂ Act were to be taken “in good time”, according to the new Climate Protection Act. These issues were, to some extent, addressed by the revised CO₂ Act, adopted by Federal Parliament shortly after the cutoff date. The ECtHR, however, had nothing to say about (direct) democracy in its judgment, except for the undisputed but rather shallow statement that ‘democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law’.²⁰⁷ Rather, the Court stressed ‘the key role which domestic courts have played and will play in climate-change liti-

²⁰⁴ Federal Council, ‘Le Conseil fédéral clarifie sa position sur le verdict de la Cour européenne des droits de l’homme concernant la protection du climat’ (transl.), available (in French) at: <https://www.admin.ch/gov/fr/accueil/documentations/communiqués/msg-id-102244.html>.

²⁰⁵ See ECtHR, *KlimaSeniorinnen* (note 2), para. 556: ‘[T]he Court’s assessment is limited to examining the domestic legislation as it stands on the date of adoption of the present judgment, namely 14 February 2024 (...)’.

²⁰⁶ See Reich & Boss (note 53) 153.

²⁰⁷ ECtHR, *KlimaSeniorinnen* (note 2), para. 412.

gation’ (see section 7.4).²⁰⁸ For better or worse, this is unlikely to apply to Switzerland. Alexis de Tocqueville famously observed that there is hardly a political question in the United States that does not ‘sooner or later, turn into a legal one to be decided by the courts’.²⁰⁹ The opposite is true for Switzerland: there is hardly a major legal issue that does not, sooner or later, become a political issue to be decided by the people at the ballot box.²¹⁰

9. COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE: SUPERVISION AS A PROCESS

Following their 1521st meeting of 4–6 March 2024, the Committee of Ministers of the CoE, responsible ‘for the supervision of the execution of a final judgment’ of the ECtHR,²¹¹ published a brief decision on *KlimaSeniorinnen*.²¹² The Committee noted, with reference to the Federal Act on Climate Protection and the revised Federal CO₂ Act (see section 4) ‘that certain issues have been resolved on the federal level, such as the filling of legislative lacunae’ and requested further information on the methodology of the relevant ‘carbon budget’ (see section 7.3).²¹³ Furthermore, it invited the domestic authorities to ‘update the Committee on the evolution of domestic case law, regarding both the standing of associations to bring climate change-related cases and on courts’ assessments of the merits of such cases’ in view of the direct application of the ECHR in Switzerland (‘monism’; see section 4).²¹⁴ The Committee made it clear that monitoring the execution of *KlimaSeniorinnen* will be an ongoing process.²¹⁵

In a further review in September 2025, the Committee ‘noted that Switzerland, by a method of its choice, has quantified the future greenhouse gas emissions

²⁰⁸ See ECtHR, *KlimaSeniorinnen* (note 2), para. 639.

²⁰⁹ Alexis de Tocqueville, ‘De la démocratie en Amérique’, vol I (first published 1835) in Jean-Paul Mayer (ed), *Alexis de Tocqueville: Oeuvres complètes, vol I* (Gallimard 1961), 281.

²¹⁰ Johannes Reich, ‘Information als Voraussetzung des Verwaltungshandelns’, in Frank Schorkopf (ed), *Bestimmungsfaktoren ‘guter Verwaltung’*, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer vol 83 (De Gruyter 2024) 317, 356–7 (DOI: <https://doi.org/10.0000/9783111293288>).

²¹¹ ECHR (note 1), article 46 section 3.

²¹² Committee of Ministers (Deputies), H46-30 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), Supervision of the execution of the European Court’s judgments, Decision, CM/Del/Dec(2025)1521/H46-30.

²¹³ Committee of Ministers (note 215) para. 5.

²¹⁴ Committee of Ministers (note 215) para. 8.

²¹⁵ See Committee of Ministers (note 215) para. 9.

corresponding to the general measures and the target timeline put in place'.²¹⁶ This was an 'implicit carbon budget' derived from the interim targets enshrined in the Swiss CO₂ Act, the Climate Protection Act and Switzerland's NDC, which Switzerland communicated to the Committee as 'in conformity with its margin for manoeuvre recognised by the Court'.²¹⁷ This approach was, however, criticised by the Swiss National Human Rights Institution (NHRI) as 'a simple inventory of planned GHG emissions, not a budget of permissible emissions',²¹⁸ as well as by the 34 NGOs and the applicant association *Verein KlimaSeniorinnen Schweiz*,²¹⁹ in their respective communications to the Committee. The Committee decided to resume the supervision in a further meeting, while also 'invit[ing] Switzerland to consider the opportunity of establishing an independent national body suited to the national political structure to monitor its climate policy (. . .)'.²²⁰ By recognizing an 'implicit carbon budget' grounded in existing legislation, the Committee effectively attenuates the obligations deriving from the initial judgment. Moreover, recent studies demonstrate that Switzerland's 'planned CO₂ emissions reductions are insufficient to remain within its fair share of the global [remaining carbon budget] under almost all allocation methods considered'.²²¹

²¹⁶ Committee of Ministers (Deputies), H46-37 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), Supervision of the execution of the European Court's judgments, Decision, CM/Del/Dec(2025)1537/H46-37, para. 5.

²¹⁷ See 1537th meeting (September 2025) Rule 8.2a Communication from Switzerland in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20) [french only] p. 6–8, quote translated by the author.

²¹⁸ 1537th meeting (September 2025) Rule 9.2 Communication from an NHRI (Swiss human rights institution), H46-37 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20) para. 14.

²¹⁹ See 1537th meeting (September 2025) Rule 9.2 Communication from NGOs (Greenpeace International, Climate Litigation Network and 32 others) in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20); 1537th meeting (September 2025) Rule 9.2 Communication from an NGO (*Verein KlimaSeniorinnen Schweiz*) in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20).

²²⁰ Committee of Ministers (note 219) paras. 5 and 8.

²²¹ See Konstantin Weber, Cyril Brunner & Reto Knutti, 'Tracking country-level mitigation progress using NGHGI-consistent carbon budgets' (2026) *nature communications* 17:1494, 7.

10. CONCLUSION: A RIGHT TO PROCEDURAL DUE PROCESS IN CLIMATE MITIGATION POLICIES IN LIEU OF SUBSTANTIVE PROTECTION

‘[E]very dispute is normatively justiciable’, Aharon Barak, the President of the Supreme Court of Israel from 1995 to 2006 and a prolific legal scholar, once boldly stated.²²² *KlimaSeniorinnen* may be considered a case in point. Despite its own assessment that ‘the nature of climate change and its various adverse effects and future risks, the number of persons affected, in different ways and to varying degrees, is *indefinite*’,²²³ the Court was still in a position to unequivocally conclude in a very *definite* manner that Switzerland’s climate mitigation legislation, as of 14 February 2024 (see section 8), failed to comply with the positive obligations derived from the right to private and family life according to ECHR, article 8 (see section 7.3). The seemingly commanding ease with which the Court identified *judicially manageable standards* to determine a common minimum standard derived from the ECHR’s right to private and family life with regard to domestic climate change mitigation policies is anything but a matter of course. In its ruling, the Court was extremely cautious when it came to deriving substantive requirements from ECHR, article 8, which member states must not fall short of in their efforts to mitigate climate change. The Court’s approach rather mirrors the concept of the Paris Agreement’s ‘Nationally Determined Contributions’,²²⁴ according to which initiating a transparent process to reduce GHG emissions is bound to generate its own logic and would thus yield substantive outcomes (see section 7.4). Against the backdrop of the principle of ‘common but differentiated responsibilities and respective capabilities in light of different national circumstances’,²²⁵ it is proving difficult to define a GHG emissions threshold that a specific country is not permitted to exceed.²²⁶ Despite all of this, climate change mitigation, it seems, proved to be *infinitely complex, albeit justiciable* for the ECtHR.

²²² Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 179 and Aharon Barak, ‘A Judge on Judging: The Role of a Supreme Court in a Democracy’ (2002) 116 *Harvard Law Review* 19, 98: ‘In my opinion, every dispute is normatively justiciable.’; see also Ran Hirschl, ‘The Socio-Political Origins of Israel’s Juristocracy’ (2009) *Constellations* 476, 480: ‘Barak’s maxim [is] that “(...) anything and everything is justiciable” (...)’.

²²³ ECtHR, *KlimaSeniorinnen* (note 2), para. 479 (emphasis added).

²²⁴ Cf Paris Agreement (note 47), article 4 section 2.

²²⁵ Paris Agreement (note 47), article 2 section 2.

²²⁶ Cf in a similar vein ECtHR, *KlimaSeniorinnen* (note 2), Separate Opinion by Judge Tim Eicke, para. 14.

Considering its five-pronged test,²²⁷ the key to identifying a common minimum standard is for the Court to reinterpret the *substantive* right to private and family life as a right to compel CoE member states *to establish, maintain and continually adapt structured governmental and administrative planning and procedures to mitigate climate change* (see section 7.3). At the same time, this requires states to exercise due diligence in their policies to address climate change (see section 7.3). While courts will generally lack relevant expertise to review such targets in substance (the Court's own refusal to specify concrete remedies speaks volumes in this respect²²⁸), they are well placed to monitor compliance with *procedural* requirements. Whether such *procedural due process in climate mitigation policies* ensures effective protection of the physical integrity of persons within the scope of the ECHR is, of course, another matter. Remarkably, these procedural requirements are broadly similar to those already established by EU law in particular.²²⁹ This begs the question of what distinctive reasoning courts can offer when they resort to deriving fine-grained and essentially pre-existing legal obligations from vague human rights guarantees.

In the light of this transformation of a substantive right into a procedural obligation, establishing distinct criteria for the *locus standi* of associations (see section 7.2), being strictly limited to issues of climate change policy,²³⁰ seems consistent in that the focus has shifted from protecting the rights of individual human beings to ensuring methodical and rational administrative and legislative procedures. This approach, if followed through at the domestic level, strengthens the relevance of the judicial branch in tackling the climate crisis – something which obviously chimes with the Court's intentions.²³¹

'The justiciability of everything', however, comes at a price. Judicial applications to compel states to reduce their GHG emissions run the risk of being transformed "into a hybrid form of weak public interest litigation, akin to supervisory complaints in administrative law".²³² Furthermore, courts that not only proclaim to be authorised to rule on applications brought by associations whose members need not be victims but find themselves unable to specify concrete remedies may lose sight of their *raison d'être*: the victims.

²²⁷ ECtHR, *KlimaSeniorinnen* (note 2), para. 550, and section 7.3.

²²⁸ Cf ECtHR, *KlimaSeniorinnen* (note 2), para. 657; see section 7.1.

²²⁹ On these requirements see, e.g. Regulation 2021/1119 (note 69).

²³⁰ European Court of Human Rights (sitting as a Grand Chamber), *Cannavacciuolo and Others v. Italy*, Application no. 39371/20, 30 January 2025, paras. 220–21.

²³¹ Cf ECtHR, *KlimaSeniorinnen* (note 2), para. 639 (stressing 'the key role which domestic courts have played and will play in climate-change litigation'); see also section 7.4.

²³² See Reich (note 168) 47–8 (labelling this an 'administrative turn').

Climate Change Litigation Cases in Context

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List of abbreviations

AAPCL	Atmospheric Pollution Prevention and Control Law (China)
ACCC	Australian Competition and Consumer Commission
ADC	Declaratory Action of Constitutionality (Brazil)
ADI	Direct Action of Unconstitutionality (Brazil)
ADO	Direct Action of Unconstitutionality by Omission (Brazil)
ADPF	Allegation of Violation of Fundamental Principle (Brazil)
ASIC	Australian Securities and Investments Commission
BGB	<i>Bundesblattgesetz</i> (German Civil Code)
BNDES	Brazilian Development Bank
CDR	carbon dioxide removal
CMA	Senate Environmental Committee (Brazil)
CNA	National Confederation of Agriculture (Brazil)
CNC	National Confederation of Commerce (Brazil)
CNI	National Confederation of Industry (Brazil)
CNS	National Confederation of Services (Brazil)
CNT	National Confederation of Transportation (Brazil)
CoE	Council of Europe
COPW	Centre for Oil Pollution Watch
CPL	Civil Procedure Law (China)
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
CTCA	Cap and Trade Cancellation Act (Ontario, Canada)
DEQ	Department of Environmental Quality (Montana)
DETEC	Federal Department of the Environment, Transport, Energy and Communication (Switzerland)
DPSP	Directive Principle of State Policy (India)
ECHR	European Convention on Human Rights

ECtHR	European Court of Human Rights
EEDCL	ecological and environmental damage compensation litigation
EIA	environmental impact assessment
ELD	Environmental Liability Directive
EPL	Environmental Protection Law (China)
ERA	Environmental Rights Amendments (Montana)
ESG	Environmental, social, and governance
ETS	emissions trading scheme
EU	European Union
FEPA	Federal Environmental Protection Agency (Nigeria)
FON	Friends of Nature Institute
GHG	greenhouse gas
GW	gigawatts
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Culture Rights
INESC	Institute of Systems and Computer Engineering
IPCC	Intergovernmental Panel on Climate Change
kWh	kilowatt-hours
LNG	liquified natural gas
LRF	Fiscal Responsibility Law (Brazil)
LULUCF	Land Use, Land-Use Change and Forestry
MDEQ	Montana Department of Environmental Quality
MEIC	Montana Environmental information Center
MEPA	Montana Environmental Policy Act
MMP	mixed-member proportional
MNRE	Ministry of New and Renewable Energy (India)
MOEFCC	Ministry of Environment, Forest and Climate Change (India)
NAE	National Administration of Energy (China)
NDC	Nationally Determined Contribution
NDRC	National Development Reform Commission (China)
NGO	non-governmental organization
NNPC	Nigerian National Petroleum Corporation

OECD	Organization for Economic Co-operation and Development
PIL	public interest litigation
PNMA	Brazilian National Environmental Policy
PNMC	National Policy on Climate Change (Brazil)
PSB	Brazil Socialist Party
PSOL	Socialism and Freedom Party (Brazil)
REDE	Sustainability Network Party (Brazil)
REL	Renewable Energy Law (China)
RMA	Resource Management Act 1991 (New Zealand)
RWE	RWE AG, German multinational energy company
SAN	Senior Adocates of Nigeria
SASAC	State-owned Assets Supervision and Administration Commission (China)
SNMC	National Climate Change System (Brazil)
SOE	state-owned enterprise
SPC	Supreme People's Court of China
STF	Brazilian Supreme Court
tWh	terawatt-hours
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
WEF	World Economic Forum
ZPO	<i>Zivilprozessordnung</i> (German Code of Civil Procedure)