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## Switzerland's climate targets: at the ballot box and before the ECHR

In the case "Association KlimaSeniorinnen and Others vs Switzerland" (Application no. 53600/20) the European Court of Human Rights (ECHR) has to judge an action of international importance. The complaint of the Climate Seniors is essentially based on the violation of Articles 2 and 8 of the European Convention on Human Rights (ECHR). Article 2 ECHR guarantees the right to life and Article 8 ECHR the right to private and family life. These rights are linked to obligations of the state to protect, which also affect the Swiss government and which are allegedly not fulfilled by the current climate legislation. The plaintiffs are older women, who are said to be more severely affected in terms of health due to the demonstrably frequent heat waves. They allege that, compared to the population as a whole, they face a significantly higher risk of illness and death during extreme heat waves.

The Climate Seniors are of the opinion that Switzerland is in breach of its protection obligations. Binding climate targets are missing or insufficient to achieve a warming limit of more than 1.5° C and to reduce domestic greenhouse gas emissions. The plaintiffs demand that the greenhouse gas emissions generated in Switzerland must be reduced by more than 60 % by 2030 with domestic measures and that Switzerland must also enable extensive emission reductions abroad with domestic measures.

Before appealing to the ECHR, the Climate Seniors exhausted the Swiss legal process. However, the Federal Supreme Court, as the last national instance, dismissed their complaint in its judgment of May 5, 2020 (BGer 1C\_37/2019). The Court took the view that the right to life and health of the Climate Seniors had not been threatened to a sufficient extent at the time of the ruling and that there was still time to reach the level of global warming of well below 2° Celsius. It found that neither the Climate Seniors nor the rest of the public can pursue such issues through legal proceedings in the courts. Political means are available for this in Switzerland. Moreover, according to the Federal Supreme Court, the fundamental right to life is not affected in a legally relevant way.

Due to its importance, the complaint filed by the Climate Seniors after the Federal Supreme Court's decision to dismiss the case will now be dealt with by the Grand Chamber of the ECHR with 17 members. The Grand Chamber asked the question whether Switzerland has a national CO<sub>2</sub> budget to limit the global temperature increase to 1.5°C (in accordance with the Paris Agreement), and how Switzerland calculates the CO<sub>2</sub> budget it still has left to set its own climate targets. Furthermore, the ECHR asked how, in Switzerland's opinion, the fair contribution (the so-called "fair share") to meeting the global CO<sub>2</sub> budget should be calculated. As expected, Switzerland's answers were sharply criticized by the plaintiffs.

In its comments to the ECHR, Switzerland also referred, among other things, to the indirect counter-proposal to the Glacier Initiative, the draft Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security (KIG). Switzerland argued that the KIG would set binding climate targets and measures. While the Glacier Initiative envisages, among other things, a complete ban on the consumption of fossil fuels from 2050, the aim of the KIG is to achieve a climate-neutral Switzerland by 2050, a reduction (but not a ban) on the consumption of fossil fuels such as oil and gas and a balancing of the remaining greenhouse gas emissions. In addition, the unavoidable consequences of climate change are to be mitigated.

In the referendum of June 18, 2023, Swiss voters approved the new Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security. In the proceedings before the ECHR, this popular decision will strengthen Switzerland's position. Whether a ruling in favour of Switzerland can be expected remains open. The ruling of the Grand Chamber of the ECHR is expected at the end of 2023 at the earliest.

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