

## KLIMASENIORINNEN: THE SWISS HUMAN RIGHTS INSTITUTION IS CONCERNED BY THE DECLARATION OF THE FEDERAL ASSEMBLY

Freiburg, Switzerland, 12.06.2024. For immediate release. With its declaration on the “Klimasenioren” judgment, the Federal Assembly is attacking the very heart of the European human rights system. It also questions the competence of the courts to apply human rights to the biggest challenges of our time. It is now up to the Federal Council to limit the damage and reaffirm the binding nature of judgments by the European Court of Human Rights.

Today, the Swiss Federal Assembly sided with the Council of States in its declaration on *Klimasenioren and others against Switzerland*. The Swiss Human Rights Institution (SHRI) is concerned by this declaration.

"The binding nature of the rulings of the European Court of Human Rights (ECtHR) is the heart of the European human rights system. It is the element that makes this system unique and a model worldwide," says Véronique Boillet, member of the SHRI Committee and Professor of Public Law at the University of Lausanne. "This core element is directly attacked when the Federal Assembly calls on the Federal Council not to give the judgment any further consequences. The binding nature of the judgments of the ECtHR also means that it is not for the Swiss Parliament to decide when a judgment has been implemented and when further measures are necessary. This is the task of the Committee of Ministers of the Council of Europe – to which Switzerland is party."

Attacking this core element fundamentally undermines the legitimacy and scope of action of the Court. The declaration of the Federal Assembly therefore weakens human rights protection throughout Europe.

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### Long-established case law

The parliamentary debates gave the impression that the European Court had crossed a red line by applying the protection of human rights to the issue of climate change. However, the Court based its decision on deep-rooted case law.

This case law establishes that the Convention is a living instrument and must adapt to the issues of our time. It also affirms that States have a duty to protect their inhabitants from the consequences of environmental damage. It is strange that the Federal Assembly suddenly questions the legitimacy of this long-established case law.

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### The ball is in the Federal Council's court

"There is no alternative to developing human rights", says Stefan Schlegel, Director of the SHRI. "If only because the world is changing, and human rights must continue to effectively protect people's freedom and dignity. Climate change will fundamentally endanger people's lives, health, security and property. It would therefore be absurd to deny a relationship between climate change and human rights."

In the three decisions of 9 April 2024, the Court has specified this relationship for the first time. It has not, however, developed a new right to climate protection. It has applied an existing right - the right to health protection - to a relatively new threat: climate change. These judgments answer a legal question. But they also, inevitably, have political implications.

"It would be good for the Federal Assembly to reflect on how it can best uphold human rights in its climate policy, instead of considering how the ECtHR ruling can be implemented in the most minimalist way possible," says Stefan Schlegel. "The Federal Council, which represents Switzerland at the Committee of Ministers of the Council of Europe, must now take responsibility for this. It now in its hands to limit the damage and to assure the Council of Europe that Switzerland still recognises the binding nature of the Court's rulings."

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## Human rights are a prerequisite for democracy

Another feature of the debate in Parliament was the strong emphasis on the tension between (direct) democracy and innovative case law by courts. However, effective human rights protection is a prerequisite for a vibrant democracy. Only when everyone can speak freely can everyone raise their voice.

Human rights are not upheld because they are written down on paper, but through courts that apply them effectively. It is normal that courts set certain objectives, as the ECtHR did for Swiss politics. It is also a sign of a functioning system of checks and balances. "However, the Court has only set objectives for Switzerland. Deciding on the measures remains a matter for politics, as the Court has explicitly reaffirmed" emphasises Véronique Boillet. Stefan Schlegel adds: "By making a ruling that gives a political impulse, the ECtHR has not overstepped its role; on the contrary, it has carried out its key task".

*The Swiss Human Rights Institution (SHRI) is the national human rights institution in Switzerland. It is based on the Paris Principles and on federal law. It is funded by the federal government and the cantons; however, it carries out its work independently. The task of the Swiss Human Rights Institution is to protect and promote human rights in Switzerland. It fulfils this task through documentation, research, advice and mediation. The SHRI was founded in 2023 and is staffed since 2024. It is an associated member of the European Network of National Human Rights Institutions (ENNHRI).*

### Media contacts

Noémi Manco, Communications Manager (FR, EN, IT)  
+41 26 505 44 44  
media@isdh.ch

Stefan Schlegel, Director (DE, FR, EN)  
+41 26 505 44 41

Véronique Boillet, Committee member (FR, EN, DE)  
+41 21 692 28 08