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COMMUNICATION
IN ACCORDANCE WITH RULE 9(2) OF THE RULES OF THE COMMITTEE OF MINISTERS REGARDING THE SUPERVISION OF THE EXECUTION OF JUDGMENTS AND OF THE TERMS OF FRIENDLY SETTLEMENTS BY THE SWISS HUMAN RIGHTS INSTITUTION IN THE CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND (application no. 53600/20)

1 The judgment of the Grand Chamber of the European Court of Human Rights ("the Court" hereinafter) in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (application no. 535600/20, "the Judgment" hereinafter) concerns Switzerland's failure to adequately mitigate climate change. The Court identified significant shortcomings in the authorities' establishment of a domestic regulatory framework, specifically the absence of quantified national greenhouse gas emissions limits through a carbon budget or equivalent methods. The Court also found that Switzerland had failed to meet its previous emission reduction targets and that the State had failed to act in a timely manner to design, develop and implement the relevant legislative and administrative framework. Consequently, the Court concluded that the authorities violated their positive obligations under Article 8 of the European Convention on Human Rights ("the Convention" hereinafter) in the context of climate change.

2 The Court also found a violation of Article 6(1) of the Convention because the applicant association was denied access to domestic courts to pursue its complaint regarding the effective implementation of mitigation measures under existing domestic law.

3 The case became final on 9 April 2024. It is a leading case and under enhanced supervision.

4 The submitting organisation is Switzerland's independent national human rights institution (Swiss Human Rights Institution, "SHRI" hereinafter). Its mission is to advocate for the rights and interests of all population groups, with a particular focus on addressing emerging threats to the enjoyment of human rights, such as those posed by climate change. The SHRI undertakes analyses of the implementation of human rights in Switzerland, identifies any shortcomings and how they may be addressed, initiates dialogue and participates in political discourse. Like other national human rights

institutions, the role of the SHRI is to hold domestic authorities accountable for their human rights obligations. This includes explaining Switzerland's obligations under the Convention and in the Council of Europe, as well as advocating for concrete changes in policymaking in areas that are relevant to human rights, such as climate change. The SHRI was founded in 2023, and its mandate is enshrined in the Federal Act on Civilian Peacebuilding and Promotion of Human Rights[1].

5 The submission of the SHRI follows the structure of the action report of 27 September 2024 submitted by Switzerland to the Committee of Ministers ("the action report"). It focuses on Switzerland's objectives and implementation measures in relation to climate change mitigation actions. The submission also addresses the approach taken by Switzerland to remedy the violation of Article 6 of the Convention identified by the Court.

Executive summary

6 On the basis of the SHRI's submissions below, the SHRI recommends in particular that the Committee of Ministers:

- → invites Switzerland to provide detailed information on the methodology chosen for calculating the carbon budget, with particular reference to:
  - the embedded emissions,
  - the alignment with the 1.5°C target of the Paris Agreement and
  - the considerations on the basis of which Switzerland has determined its fair share in relation to the other States in reference to the applicable principles of equity and capability;
- → invites Switzerland to provide further explanation into how the overall and intermediate reduction targets to reach net zero were set, and whether they ensure that the 1.5°C objective will be met on the basis of the best available evidence and in respect of the remaining appropriate, Convention-compatible domestic carbon budget;
- → requests Switzerland to explain how the national transformation required to reach net zero will be ensured within the remaining domestic carbon budget;
- → asks Switzerland how the standing of associations in climate cases will be guaranteed;
- → continues to monitor the execution of the Judgment and requests Switzerland to submit an Action Plan with a timetable or calendar for implementation of the Judgment, including the enactment of specific legislative and administrative measures.

General measures

ad. 3 General observations (orig. Observations générales)

7 In June 2024, both chambers of the Swiss Parliament adopted a declaration in which they accused the Court of undue and inappropriate judicial activism by overstepping the bounds of legal

[1] Federal Act on Civilian Peacebuilding and Promotion of Human Rights, SR 193.9, available under https://www.fedlex.admin.ch/eli/cc/2004/253/fr; For more information on the SHRI, see: https://www.isdh.ch/en (both last visited on 10 January 2025).

interpretation.[2] In the declaration, the Swiss Parliament also stated that Switzerland had already complied with the ruling and no further consequences needed to be drawn. In August 2024, the executive branch of the Swiss Government, the Federal Council ("the Federal Council" hereinafter), endorsed the declaration by the Swiss Parliament.[3] The Federal Council declared that Switzerland was already meeting the climate policy requirements of the ruling and that no further action was needed.

8 The SHRI wishes to inform the Committee of Ministers that the statements of the Swiss Parliament and the Federal Council on the Judgment have provoked widespread public objections. The debate on the statements joined the political debate triggered by the Judgment on the role of the Court and the separation of powers. The public interest shown in this debate demonstrates the importance that the Convention and the Court have for the Swiss public.

ad. 5.2 Measures concerning the violation of article 8 of the Convention (orig. Mesures concernant la violation de l'article 8 de la Convention)

ad. 5.2.1 Defining objectives and implementing measures (orig. Définir des objectifs et mettre en oeuvre des mesures)

9 Switzerland submits that it had already fulfilled the Court's Judgment in relation to the violation of Article 8 of the Convention, mainly as a result of the measures adopted in the revised CO_2 Act, the Climate Act, and the Climate Protection Ordinance (all of which entered into force on 1 January 2025), the Draft CO_2 Ordinance, and the calculation of a carbon budget.

10 The Court already examined and considered the Climate Act (§§ 127, 565 and 568). The Court observed that the Climate Act 'sets out the general objectives and targets but that the concrete measures to achieve those objectives are not set out in the Act but rather remain to be determined by the Federal Council and proposed to Parliament "in good time"' (§ 565). On this basis, the Court concluded that '[w]hile acknowledging the significant progress to be expected from the recently enacted Climate Act, once it has entered into force, the Court must conclude that the introduction of that legislation is not sufficient to remedy the shortcomings identified in the legal framework applicable so far' (§ 568). The Court noted the lack of concrete measures in the Climate Act and the fact that, according to the Climate Act, these concrete measures should be 'determined by the Federal Council and proposed to Parliament "in good time"' (§ 565). It found the obligation to act 'in good time' as too vague and not sufficiently binding 'given the pressing urgency of climate change' (§ 567) to fulfil the positive obligations of Article 8.

[2] Declaration of the Council of States of 5 June 2024, "Arrêt de la Cour EDH "Verein Klimaseniorinnen Schweiz et autres c. Suisse", available under: https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=64711 (last visited on 16 January 2025); Declaration of the National Council of 12 June 2024, "Arrêt de la Cour EDH "Verein Klimaseniorinnen Schweiz et autres c. Suisse", available under: https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=64937 (last visited on 16 January 2025). Please note, the two declarations of both chambers of the Swiss Parliament are identical.
[3] Federal Council, Press release of 28 August 2024, "Le Conseil fédéral clarifie sa position sur le verdict de la Cour européenne des droits de l'homme concernant la protection du climat", available under: https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-102244.html (last visited on 16 January 2025).

11 In the view of the Court, therefore, the basis of the legislative framework needs to be changed in order to meet the requirements of Article 8. This has two consequences for the implementing measures identified by Switzerland in its action report.

- First, the Climate Act as of 30 September 2022 cannot provide a basis for the execution, as the Court had already found it inadequate in its Judgment.

- Second, as a corollary to the Court's assessment of the Climate Act as of 30 September 2022, it is questionable whether legislation based on the current Climate Act can satisfy the conditions of Article 8. This may include the revisions to the CO_2 Act, the Climate Protection Ordinance and the Draft Ordinance to the CO_2 Act (see margin no. 9).

12 In spite of these fundamental reservations, the SHRI will comment in the following on the conformity of the above-mentioned legal measures (see margin no. 9) with the Judgment. The assessment is based on the content of the States' positive obligations under Article 8 put forth in §§ 544-554 and the application of the principles to the present case in §§ 555-557 of the Judgment. It follows the requirements detailed in § 550(a)-(e).

13 The Court requires Switzerland to 'adopt general measures specifying a target timeline for achieving carbon neutrality (...) in line with the overarching goal for national and/or global climate-change mitigation commitments' (§ 550(a)). The target timeline shall include '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' (§ 550(b)).

14 The SHRI welcomes that the Climate Act sets a net zero target for 2050 (Art. 3 para. 1) and a linear reduction path with intermediate reduction targets (Art. 3 para. 3). However, once the remaining GHG emissions are properly quantified (see margin nos. 31-39), the net zero target, and thus also the intermediate reduction targets, are likely to prove to be too unambitious in terms of the time remaining before Switzerland exhausts its remaining carbon budget. Put simply, Switzerland should be net zero well before 2050. The year by which net zero should be achieved and the corresponding reduction path need to be determined in relation to the remaining carbon budget (see margin nos. 31-39). Moreover, the Climate Act subordinates the reduction targets and path to 'economic viability' (Art. 3 para. 4), thereby disregarding the pressing nature of climate change (§ 410) as well as the superordinate principles of environmental sustainability enshrined in the Swiss Federal Constitution[4] (Art. 2 para. 2, Art. 4, Art. 73, Art. 73-80, Art. 54, Art. 89, Art. 104 and Art. 120). The prioritisation of 'economic viability' also undermines the non-conditional obligation of 'reaching net neutrality within, in principle, the next three decades' set by the Court (§ 548).

15 In addition, the GHG emission reduction targets and reduction path with intermediate reduction targets do not account for the objective of limiting the temperature increase to 1.5°C above pre-industrial levels, as set out in the Paris Agreement. As a result, there is no legal basis for assessing Switzerland's contribution to the 1.5°C objective (this point will be further discussed in relation to the carbon budget, see margin nos. 31-39). The action report also fails to clarify the relationship between the emission reduction targets and the reduction path on the one hand and the 1.5°C

[4] Federal Constitution of the Swiss Confederation, SR 101 ("Swiss Federal Constitution" hereinafter), available under: https://www.fedlex.admin.ch/eli/cc/1999/404/en (last visited on 16 January 2025).

objective on the other. Furthermore, the State has not yet provided the scientific basis to assess whether the emission reduction targets, and timetable would meet the 1.5°C objective.

16 After setting the reduction target for 2050 at net zero, the Climate Act and the CO_2 Act set out timetables for the reduction of greenhouse gases for the period between 2021 and 2050 (Art. 3 para 3 and Art. 4 para 1 of the Climate Act; Art. 3 of the CO_2 Act). The timetable must allow for continued monitoring and review of the GHG reduction targets (§ 550(d)) as the overall reduction path must be capable of mitigating the serious current and future threat to the enjoyment of human rights guaranteed under the Convention (§ 550(b)). This requires the establishment of interim GHG emission reduction targets (§ 550(b)) that are consistent with the overall reduction target (§§ 550(e) and 573).

17 Based on these requirements, the SHRI notes that the interim reduction targets for the years 2021 to 2030, and 2031 to 2050 respectively, are too vague, and in each case too distant and too far apart from each other (see Art. 3 para. 1 lit. b CO_2 Act; Art. 3 para 3 and Art. 4 para 1 of the Climate Act). This makes it difficult to monitor on an ongoing basis in the next few years whether Switzerland is on the right track towards net zero. It is therefore not legally possible to verify whether Switzerland is on the right track towards net zero and whether interim reduction targets are continuously 'based on the best available evidence' (§ 550(d) in connection with §§ 118 and 119). In any case, the interim reduction targets and the timeline are at odds with the Court's position that 'immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality' (§ 549).

18 Yet, the setting of interim GHG emission reduction targets is all the more relevant in view of the fact that Switzerland indisputably missed its national reduction target for 2020 (§ 559). The slower Switzerland moves towards a net-zero target, the less likely it is that Switzerland will be able to make a sufficient contribution to achieving the 1.5°C target set by the Paris Agreement (§ 558 in connection with §§ 115 and 116 which stress the necessity of immediate reduction). In addition, and as already underlined in margin no. 15, it is unclear whether the interim targets had been defined in view of the 1.5°C target, the principles of equity and respective capabilities (see margin no. 35).

19 Furthermore, the GHG reduction targets only concern GHG emitted in Switzerland (Art. 3 para. 1 Climate Act; Art. 3a para. 1 CO_2). By legal definition, Switzerland thus reduced the material scope of the domestic legal climate regime to the GHG emissions that incurred in Switzerland. In addition, the CO_2 Act reduces the scope of application even further in comparison with the Climate Act, and in an inconsistent manner. Whereas the Climate Act explicitly states that 'to achieve the reduction targets emissions from fuels refuelled in Switzerland for international flights and shipping shall also be taken into account' (Art. 4 para. 6 Climate Act), the revised CO_2 Act expounds 'emissions from fossil fuels refuelled in Switzerland for international flights and shipping are not taken into account' (Art. 3a para. 2 CO_2 Act).

20 The reduction of the scope of the legal climate regime to GHG emitted in Switzerland neglects the significance of embedded emissions for the overall Swiss GHG footprint, thereby disregarding the Court's affirmation that embedded emissions fall within the scope of the case (§§ 280 and 283; § 4 of the partly concurring partly dissenting opinion of Judge Eicke). As it would be 'difficult, if not impossible, to discuss Switzerland's responsibility for the effects of GHG emissions on the applicants' rights without taking into account the emissions generated through the import of goods and their consumption (...)' (§ 280), the embedded emissions must be considered in the timeline for reducing

GHG emissions towards net neutrality and the calculation of the remaining carbon budget (see for further explanations, margin nos. 31-39).

21 In contrast, Switzerland stresses the transnational dimension of the reduction of GHG emissions by factoring in the reduction of emissions and through emissions trading systems and carbon offsetting programmes in other States (Art. 3a para. 3, Art. 4 para. 5 and Art. 6 CO_2 Act; Art. 3 Climate Act; Art. 4b et seq. Draft CO_2 Ordinance). Put simply, emissions caused abroad are not counted, but emissions reduced abroad are.

22 This is also shown by the fact that the formal laws (CO_2 Act and Climate Act) do not mention a domestic reduction target, leaving it to the Federal Council to define one. The Draft CO_2 Ordinance refers to a 2/3 domestic reduction target (Art. 2a). Apart from the fact that the Federal Council could change this goal at any time, which is in tension with the Court's insistence that reduction targets should be 'part of a binding regulatory framework' (§ 549), the CO_2 Act explicitly leaves the option open to reach the reduction targets by acquiring international certificates (Art. 4 para. 4 CO_2 Act). The Court however refers to the 'progressive reduction of their [States'] respective GHG emission levels' (§ 548). It also found that the State had failed to meet its target set out in the CO_2 Act of 2011 of reducing emissions by 20% by 2020 compared to 1990 (§§ 87 and 358). At the same time, the Court noted that Switzerland had met its international objective under the Kyoto Protocol (§ 358). However, Switzerland had only met its international target and came close to its own objective of a 20% reduction as set out in the CO_2 Act of 2011 thanks to its participation in emissions trading. The Court's emphasis on the fact that Switzerland had nevertheless missed its domestic reduction result shows that the Court focuses inter alia on domestic reduction results. In addition, the Court addresses reduction and pathways by sectors which shows that economy-wide mitigation efforts are required (§§ 549 and 550(b) in connection with §§ 418 and 419). The limits of the Swiss tendency to externalise the reduction of GHG emissions to other States are thus recognised by the Court. Switzerland is inter alia required to reduce *its* domestic emissions, including its embedded emissions. Otherwise, Switzerland's reliance on international offsets could delay domestic transformation required for net-zero by 2050. In this regard, the SHRI would also like to stress that the "drop in the ocean" argument – invoking a negligible capacity of individual States to affect climate change – was explicitly rejected by the Court (§ 444). States should take measures to anticipate, prevent or minimise the causes of climate change and to mitigate its adverse effects.

23 The Court demands States to 'provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets' (§ 550(c)). The SHRI notes that the Swiss action report does not provide any evidence of compliance with the GHG reduction targets. This is also difficult because, as mentioned above, the relevant legal bases lack verifiable reduction targets in the short term (see margin nos. 16 and 17). Furthermore, no verification process of the actual achievement of the targets is foreseen in the implementing measures. Certainly, Art. 40 of the CO_2 Act deals with the Federal Council's obligation to evaluate the measures taken under the CO_2 Act. However, collecting and providing evidence of GHG reductions is not clearly regulated, and thus not a defined task under the legal climate regime. This omission seems even more striking as Switzerland had clearly missed its domestic reduction targets in the past (§ 559).

24 The Court also demands States to 'keep the relevant GHG reduction targets updated with due diligence and based on the best available evidence' (§ 550(d)). In the jurisprudence of the Court, due diligence means that States must take effective measures to prevent foreseeable risks to the rights

of individuals,[5] including harm caused by private parties.[6] States must have adequate legal, administrative, and institutional systems to prevent and address rights violations.[7] These systems must continually evolve based on the best available evidence (§ 550(d)) and in considerations of all competing interests.[8]

25 The Swiss action report refers to Art. 40 CO_2 Act to meet the updating obligation.[9] Art. 40 CO_2 Act stipulates that the Federal Council shall regularly review the effectiveness and economic efficiency of the measures under this Act and the need for further measures. In doing so, it shall take into account climate-relevant factors such as population, economic and transport growth. The CO_2 Act and corresponding Draft CO_2 Ordinance do not define what *regularly* means. It is therefore not ensured that the GHG reduction targets are continuously updated. Furthermore, the evaluation is equally directed towards the effectiveness and economic efficiency of the measures. It does not define what effectiveness means and fails to refer to the severe impact that climate change has on human rights. By emphasising the economic efficiency of the measures, the effectiveness of the measures to meet the reduction targets loses significance and cannot be treated as a priority. The equalisation of economic interests with the effectiveness of CO_2 reduction measures is at odds with the demand of the Court that

> 'the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention' (§ 546).

26 As regards the updating requirement of Article 550(d), the legal framework of the implementing measures does not provide for its own continuous revision. In particular, the CO_2 and Climate Acts contain no provision to ensure that the reduction measures are strengthened if the interim GHG reduction targets are not met. It is therefore not ensured that the relevant GHG reduction targets are updated with due diligence and the best available evidence, as required by the Court.

27 In addition, the CO_2 Act gives the impression that the Federal Council is merely under the obligation to keep the Parliament informed about the evaluation of the measures taken under the Act (Art. 40 para. 4). To the Court, however, it is paramount that '[t]he information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed' (§ 554(a)).

28 The SHRI is of the opinion that, in order to comply with the above-mentioned procedural requirement, Switzerland must enact specific legislation that addresses the right of the public, and in particular of the persons concerned, to be informed and to have access to the relevant studies. This

[5] European Court of Human Rights, Case of Osman v. the United Kingdom (application no. 23452/94, 28 October 1998).
[6] European Court of Human Rights, Case of Opuz v. Turkey (application no. 33401/02, 9 June 2009).
[7] European Court of Human Rights, Case of Tătar v. Romania (application no. 67021/01, 27 January 2009).
[8] European Court of Human Rights, Case of Mileva and Others v. Bulgaria (application nos. 43449/02 and 21475/04, 25 November 2010).
[9] Action report, 5.2.6 Monitoring, p. 11.

obligation is all the more important as it appears that the Federal Council has not yet fully recognised that legislative measures to mitigate climate change are a human rights obligation. The lack of awareness that climate change measures are human rights measures is demonstrated, for example, by the absence of a review of the compatibility of recent climate-related legislation with Article 8 of the Convention and Article 13 of the Swiss Federal Constitution (see the explanatory report of 26 June 2024 on the Draft CO_2 Ordinance as well as the explanatory report of 27 November 2024 to the Climate Protection Ordinance).[10]

ad. 5.2.2 (Selected) Cantonal measures (orig. Mesures au niveau des cantons (sélection))

29 In a federal state such as Switzerland, measures taken at the cantonal level are indeed important factors in the reduction of greenhouse gas emissions. However, the protection of individuals and their natural environment from harmful or burdensome effects is the responsibility of the federal state (Art. 74 of the Swiss Federal Constitution).

30 The Court has also made clear that a coherent, up-to-date and general climate regime has to be adopted at the national level. The Swiss climate regime will of course include cantonal measures, but the general and ultimate responsibility for the reduction of GHG in line with national and/or global commitments lies with the federal government.

ad. 5.2.5 Carbon budget (orig. 5.2.5 Budget carbone)

31 The Court noted that measures to combat climate change must include the setting of a carbon budget 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 (§ 550(a) in connection with § 572). Any quantification of the amount of future GHG emissions must thus be aligned with the 1.5°C target of the Paris Agreement (§ 546), and States must comply with the global climate regime established under the United Nations Framework Convention on Climate Change, in particular the principle of common but differentiated responsibilities and respective capabilities of States (§ 442). According to the Court this means that

> 'each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State' (§ 442).

32 The Court also considers that 'under its current climate strategy, Switzerland allowed for more GHG emissions than even an "equal per capita emissions" quantification approach would entitle it to use' (§ 569). Therefore, the Court considers 'equal per capita emissions' to be a minimum approach, as there are much more ambitious quantification methods that take into account the capabilities of the State, as the Court requested (§ 442).

[10] Federal Department of the Environment, Transport, Energy and Communications (DETEC), "Rapport explicative concernant la modification de l'ordonnance sur la réduction des émissions de CO_2 (Ordonnance sur le CO_2, RS 641.711)" of 26 June 2024, available under: https://www.newsd.admin.ch/newsd/message/attachments/88458.pdf (last visited on 16 January 2025); Federal Department of the Environment, Transport, Energy and Communications (DETEC), "Ordonnance sur la protection du climate (OCI) Rapport explicative" of 27 November 2024, available under: https://www.bafu.admin.ch/dam/bafu/fr/dokumente/klima/rechtliche-grundlagen/erlaeuterung_klimaschutzverordnung_kiv.pdf.download.pdf/90819.pdf (last visited on 16 January 2025).

33 The Court also held that aside from emissions stemming from the State's territory, 'embedded emissions', i.e. the emissions caused in the production processes of goods imported into Switzerland, fall within the scope of the case (§§ 278, 280, 283 and 387).[11] Switzerland neither mentions these emissions in its action report nor in the relevant Acts (see also margin no. 19).

34 In the action report, Switzerland has set its carbon budget for the period from 2020 to 2050 at 660 million tonnes of CO_2. According to Switzerland, this amount results from the data of the greenhouse gas inventory of 25 April 2024, assuming that the emissions produced develop in line with the targets set for 2030, 2040 and 2050.

35 The SHRI's view is that Switzerland's approach to the calculation of a carbon budget is at odds with the idea of quantifying the amount of GHG emissions that can still be emitted until net zero is achieved in light of the 1.5°C target set by the Paris Agreement (as required by the Court in § 546 in connection with § 436). The Swiss action report strongly suggests that Switzerland cumulated its planned emissions based on the intermediate reduction targets instead of budgeting its carbon emissions. Carbon budgeting is a calculation of the remaining emissions that can be emitted to meet the 1.5°C target, taking into account the share of all other countries. A State's share must be calculated based on the principle of common but differentiated responsibilities (§§ 442, 478 and 571), equity (§ 571) and a State's capabilities (§§ 442, 478 and 571). Quantifying the share of remaining emissions on the basis of the principles just outlined is a necessary precondition for setting a reduction target, not vice versa. Without a transparent and verifiable quantification of the remaining GHG emissions, reduction targets cannot be defined in a meaningful way. They simply lack the basis.

36 Switzerland explains the lack of a proper carbon budget by referring to the fact that, according to the Paris Agreement, there is no established and no agreed-on methodology for determining the fair share of each country (§§ 360 and 570; action report, chapter 5.2.5, p. 11). The Court already dismissed this argument (§§ 570-572, and for further explanations see margin nos. 37 and 38). In any case, the preventive duty of Switzerland to take proactive measures to protect individuals from violation of their rights under the Convention obliges Switzerland to act.[12] This obligation also arises from the precautionary principle, one of the fundamental principles of national (and international) environmental law (Art. 1 para. 2 of the Environmental Protection Act[13]).

37 As already mentioned, the Court considered that under its current climate strategy, Switzerland allowed for more GHG emissions than even an "equal per capita emissions" quantification approach would entitle it to use' (§ 569). This indicates that an equal per capita method is the minimum approach for any quantification, be it in the form of carbon budget or another method. Moreover, while it is true that there is no agreed methodology for carbon budgeting, there are various established methodologies. A distinction must be made between the lack of consensus on the "right" methodology and the existence of well-established ones. Established methodologies are a sufficient basis for a State to develop its own budget. The Court has also identified methodological starting points such as the common but differentiated responsibility principle, equity and the capability approach

[11] The responsibility for embedded emissions must be clearly differentiated from the notion of extraterritorial human rights obligations as discussed and ultimately rejected by the Court in Duarte Agostinho et al v Portugal et al.
[12] European Court of Human Rights, Case of Osman v. the United Kingdom (application no. 23452/94, 28 October 1998) and Case of Budayeva and Others v. Russia (application no. 15339/02, 20 March 2008).
[13] Federal Act of 7 October 1983 on the Protection of the Environment ("Environmental Protection Act"), SR 814.01, available under: https://www.fedlex.admin.ch/eli/cc/1984/1122_1122_1122/fr (last visited on 16 January 2025).

for determining a national carbon budget (§§ 569-572). This carbon budget must be established in a timely manner (§ 550(e)), in reference to the 1.5°C target (§ 550(a) in connection with §§ 106 and 436) and thus in relation to the remaining global carbon budget (§ 550(a)), taking into account the international climate regime (§ 571).

38 Therefore, the SHRI understands that the choice of the methodology to determine an appropriate, Convention-compatible carbon budget, or any other method of quantifying future GHG emissions, is to some extent within a State's margin of appreciation, but a methodology must be chosen, explained and defended in light of the principles and obligations following from Article 8. In addition, the chosen methodology must be developed on the basis of the principle of common but differentiated responsibilities, equity and the capabilities of the State (see also margin no. 37). In view of the transparency requirements the Court determined in § 554, the chosen methodology for carbon budgeting must be disclosed and explained to the public.

39 The SHRI wishes to emphasise the potential systematic implications of Switzerland's approach to quantifying its remaining GHG emissions:

- If Switzerland's (incorrect, see margin nos. 36-38) argument —that States are not required to adopt a methodology for determining their carbon budget or fair share of emissions due to the absence of an established and agreed on international standard ((§§ 360 and 570; action report, chapter 5.2.5, p. 11)— were accepted, it would set a precedent allowing other States to indefinitely delay quantifying their remaining GHG emissions, thereby undermining global efforts to address climate change effectively.

- Disregarding the methodology indicated by the Court for determining a State's fair share, Switzerland has accumulated all the emissions it intends to emit by 2050. If other States were to follow Switzerland's example, the carbon budget method would be lost as an important measure (§ 572) to combat the adverse effects of climate change on the living conditions of human communities and individuals, in particular for vulnerable groups in society and future generations (§§ 410 and 420).

ad. 5.3 Measures concerning the violation of article 6 of the Convention (orig. Mesures concernant la violation de l'article 6 de la Convention)

40 The SHRI agrees with the Federal Council that the Convention has been directly applicable in Switzerland since its ratification in 1974. This means that, since the publication of the Judgment, associations which fulfil the conditions set out in § 499 have standing in climate cases.

41 The SHRI notes with concern that the Federal Department of the Environment, Energy and Communications (DETEC), despite the binding nature of the Judgment (see margin no. 40), recently refused to follow the jurisprudence of the Court on the standing of associations in climate change cases.[14] The department justified its rejection with reference to the Federal Council's declaration of 28 August 2024 on the Judgment (see margin no. 7).

[14] Federal Department of the Environment, Energy and Communications (DETEC), "Décision concernant la requête du 5 mars 2024" of 20 September 2024, available under: https://avocatclimat.ch/wp-content/uploads/2024/10/2024-09-24-DETEC-a-ANL-Decision-concernant-la-requete-du-5-mars-2024_caviardee.pdf (last visited on 16 January 2025), p. 14.

42 The report which the Federal Department of Justice and Police had been instructed by the Federal Council to prepare until the end of 2025 should therefore focus on the procedural details of the implementation of the right to appeal in the written law, as the mere existence of the right has already been established by the Court. The Federal Council should also remind all branches of government that the jurisprudence of the Court is binding on Switzerland in all matters.

Conclusion and recommendations to the Committee of Ministers

43 Based on the above analysis of the implementing measures presented by Switzerland in its action report, the SHRI respectfully submits the following substantive and procedural recommendations to the Committee of Ministers.

The SHRI recommends that the Committee of Ministers

- → expresses concern about the statements of the Swiss Parliament and Federal Council on the Judgment and reminds Switzerland of its commitment to and obligations under the Convention and its membership of the Council of Europe;
- → emphasises the pressing urgency and risks to human rights posed by climate change;
- → invites Switzerland to provide detailed information on the methodology chosen for calculating the carbon budget, with particular reference to:
  - the embedded emissions
  - the alignment with the 1.5°C target of the Paris Agreement and
  - the considerations on the basis of which Switzerland has determined its fair share in relation to the other States in reference to the applicable principles of equity and capability;
- → invites Switzerland to provide further explanation into how the overall and intermediate reduction targets to reach net zero were set, and whether they ensure that the 1.5°C objective will be met on the basis of the best available evidence and in respect of the remaining appropriate, Convention-compatible domestic carbon budget;
- → reminds Switzerland of the obligation to ensure that the public has access to the conclusions and relevant studies, which include the methodology chosen to quantify the carbon budget;
- → encourages Switzerland to ensure that the overall and intermediate GHG reduction targets and corresponding policies are continuously updated based on the latest evidence;
- → requests Switzerland to explain how the national transformation required to reach net zero will be ensured within the remaining domestic carbon budget;
- → asks Switzerland how the standing of associations in climate cases will be guaranteed;
- → and how Switzerland ensures that all branches of government follow the binding jurisprudence of the Court on the standing of associations in climate change cases;

Procedurally, the SHRI recommends that the Committee of Ministers

- → continues to monitor the execution of the Judgment;
- → requests Switzerland to submit an Action Plan with a timetable or calendar for implementation of the Judgment, including the enactment of specific legislative and administrative measures.