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COMMUNICATION NO. II

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 submitting organisation is Switzerland's independent national human rights institution (Swiss Human Rights Institution, "SHRI" hereinafter) within the meaning of the Paris Principles.[1] The SHRI was founded in 2023, and its mandate is enshrined in the Federal Act on Civilian Peacebuilding and Promotion of Human Rights.[2] Its mission is to promote and protect the rights and interests of all population groups, with a particular emphasis on addressing emerging threats to the enjoyment of human rights, including those arising from climate change. Like other national human rights institutions, the role of the SHRI is to remind domestic authorities of their human rights obligations. This includes reviewing 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.

Executive summary

2 Based on the SHRI's rule 9(2) submissions from 17 January 2025 and the submissions below, the SHRI respectfully recommends that the Committee of Ministers:

[1] Principles relating to the Status of National Institutions (The Paris Principles), as adopted by the UN General Assembly on 20 December 1993 (Resolution 48/134).
[2] 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 29 July 2025).

- → Renews its invitation for 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 based on which Switzerland has determined its fair share in relation to the share of other States;
- → invites Switzerland to provide further explanation of 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, based on the best available evidence and in respect of the remaining, 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;
- → requests Switzerland to explain how the standing of associations in climate cases will be guaranteed;
- → continues to supervise 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.

Procedural History

3 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 shortcomings in the authorities' establishment of a domestic regulatory framework and specifically the absence of quantified national greenhouse gas emission 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 obligations under Article 8 of the European Convention on Human Rights ("the Convention" hereinafter) in the context of climate change.

4 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.

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

6 Switzerland submitted on 27 September 2024 an action report to the Committee of Ministers. On 17 January 2025, the SHRI submitted a Rule 9(2) Submission[3] ("January 2025 Rule 9(2) Submission SHRI") to the Committee of Ministers, stating that Switzerland's action report is insufficient to fulfil the requirements of the court. The main arguments of this first submission were as follows:

[3] 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).

- Instead of an actual carbon budget, Switzerland has presented a mere calculation of the amount of greenhouse gas emissions that it plans to emit in line with its climate strategy. It lacks the concepts of limitation and measures that are otherwise associated with a budget and that are necessary to achieve the target set out by the Court.

- Switzerland has only included part of its future emissions in the calculation. On the one hand, it does not appear to take into account emissions caused abroad. On the other hand, it relies on compensation mechanisms, such as purchasing emission rights from other countries, to achieve its reduction targets. This is the case even though the impact and effectiveness of these compensation measures remain controversial.

- It remains unclear how the proposed calculation relates to the global 1.5°C target of the Paris Climate Agreement. To achieve this target, Switzerland would have to reduce its emissions earlier and faster. Furthermore, Swiss legislation subordinates its emissions targets to economic viability (Art. 3 para. 4 Climate Act) and thereby disregards the pressing nature of climate change (§ 410) and the urgency of climate change for the fulfilment of human rights.

- Switzerland justifies the lack of a clear carbon budget with the absence of an international consensus on the methodology. Even if such a consensus is absent, Switzerland must choose, explain, and defend a transparent methodology, which Switzerland has not done in its action report.

- It remains unclear and contested whether associations have standing in domestic legal disputes if they fulfil the criteria set out by the Court in KlimaSeniorinnen.

7 On 6 March 2025, the Committee of Ministers published its decision[4] on the evaluation of Switzerland's compliance with the judgment. While the Committee recognised the measures taken by Switzerland in the wake of the ruling, it "invited [...] the authorities to further demonstrate that the methodology used to devise, develop and implement the relevant legislative and administrative framework responds to the Convention requirements as detailed by the Court and relies on a quantification, through a carbon budget or otherwise, of national greenhouse gas emissions limitations".

8 In its communication of 23 June 2025 ("June 2025 Communication"), Switzerland provides additional information to its action report of September 2024. It addresses the legislative developments – in particular in connection with the Climate Act, the CO_2 Act, and the CO_2 Ordinance – and new climate policy measures put in place since the submission of the action report of 27 September 2024.

9 In the run-up to the following review by the Committee of Ministers in September 2025, the SHRI is submitting a second Rule 9(2) Submission. While acknowledging the additional steps taken and information provided by the Swiss authorities, the SHRI observes that the communication submitted by Switzerland to the Committee of Ministers on 23 June 2025 does not provide the necessary information to demonstrate that the ruling is being complied with. For this reason, the statements

[4] CM/Del/Dec(2025)1521/H46-30.

made in the January 2025 Rule 9(2) Submission of the SHRI remain essentially valid. They should be considered again in the second review by the Committee of Ministers.

10 Additionally, the current submission of the SHRI refers to specific points of the June 2025 Communication submitted by Switzerland to the Committee of Ministers, in order to emphasise the continuing need for action on the part of Switzerland to comply with core requirements of the ruling. The submission focuses on Switzerland's objectives and implementation measures in relation to climate change mitigation actions, and specifically on the methodology used to calculate emission reduction. The submission also addresses the approach taken by Switzerland to remedy the violation of Article 6 of the Convention identified by the Court. The SHRI believes that the most central issue remains the requirement of providing a carbon budget and choosing, explaining, and defending a methodology to establish such a budget, which is why we treat this subject first.

Mitigation measures

ad. 2.2 Methodology used to calculate emission reduction percentages (orig. Méthodologie utilisée pour calculer les pourcentages de réduction des émissions)

11 The SHRI recalls that the Court declared the 1.5°C target to be decisive with respect to human rights considerations (§ 546). Since, the International Court of Justice, in its Advisory Opinion on the obligations of States in respect of Climate Change of 23 July 2025, corroborated the view of the Court that a States' Human Rights obligations must be read through its climate related obligations and vice versa (ICJ AO obligations of States in respect of Climate Change, § 403-404).

12 The legal basis for the judgement is the Convention, interpreted in the light of the Paris Climate Agreement. It is therefore *inter alia* human rights considerations that require Switzerland to take the 1.5°C target seriously and to calculate its contribution to mitigate climate change. Underscoring that Switzerland fulfilled its obligations under the Paris Climate Agreement does, on the other hand, not automatically entail that Switzerland is also in accordance with its climate-related obligations under the Convention. The Court held that taking the 1.5°C target seriously means quantifying the GHG emissions that a country can still emit with reference to the global carbon budget (§ 550(a) in connection with § 572).

13 In its first submission (margin nos. 31-39 January 2025 Rule 9(2) Submission SHRI) the SHRI has argued in detail that Switzerland has not fulfilled its obligations under the Judgment concerning the provision 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). Carbon budgeting is a calculation of the remaining emissions that can be emitted to meet the 1.5°C target, taking into account the global budget and 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).

14 The statement that Switzerland has not fulfilled its obligations under the judgment is still valid, as the Swiss authorities have once again, in their June 2025 Communication, refrained from quantifying an appropriate national share of the remaining global carbon budget. Instead, Switzerland now

uses the term “implicit carbon budget” (p. 6 June 2025 Communication), which still covers the cumulative emissions expected to be generated when the current climate strategy is implemented. However, this is precisely not a quantification that defines the permissible limitation of emissions within the remaining global carbon budget. It is a simple inventory of planned GHG emissions, not a budget of permissible emissions.

15 The Court has made it clear that Switzerland must quantify its national GHG emissions with a carbon budget corresponding to a fair share of the global budget or to use an equivalent quantification method (§ 550(a) in connection with § 572). In addition, the states have agreed in the Paris Climate Agreement on the principle of common but differentiated responsibilities and respective capabilities. However, Switzerland explains in its June 2025 Communication that the so-called “Perspectives énergétiques 2050+” (PE 2050+), on which its climate strategy is primarily based, is not following fair-share considerations. Literally, it says: “The PE 2050+ focus primarily on the technical and economic scenarios that will enable Switzerland to achieve its climate objectives – particularly the goal of zero net emissions by 2050 – in absolute terms. It is on this basis that the reduction trajectories mentioned in Switzerland's long-term climate strategy and in the LCI [Climate Act] were defined. The analysis did not seek to determine whether the targets set for Switzerland represented a 'fair share' of the reduction targets to be achieved at the global level.” (p. 8 June 2025 Communication). However, this is precisely one of the most central requirements of the Court’s ruling. Instead, fair share considerations are only made in general terms in the context of the two NDCs set by Switzerland, which do not contain any quantification. It is therefore not apparent whether and to what extent such considerations influenced the overall ambition level of the NDCs. The Court stated in KlimaSeniorinnen v. Switzerland that it is not sufficient to rely on NDCs when assessing the fair share of a given state. It refers inter alia to the importance of the process of carbon budgeting in the opinion of the IPCC (§§ 569-572).

16 Again, this finding of the Court has since been corroborated by the Advisory Opinion of the International Court of Justice on the obligations of States in respect of Climate Change of 23 July 2025. The ICJ underlines that States are not entirely free to formulate their NDCs under the Paris Agreement but that NDCs have to be formulated so that “when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5° C above pre-industrial levels” (ICJ AO obligations of States in respect of Climate Change, § 245; see also § 249). The approaches of the two Courts vary slightly, but the result is the Same. The Court insists that relying on NDCs is insufficient to fulfil human rights obligations, and the ICJ insists that NDCs must be formulated as a fair contribution to the global 1.5° C goal. Both Courts underline States’ responsibilities to formulate their own climate policies as a fair contribution to a global effort.

17 Even though the clarifications provided by Switzerland in its ‘additional information’ are helpful, it has chosen a calculation approach that does not comply with the requirements of the Judgement: Switzerland is calculating the emissions up to 2050 that are associated with the planned climate strategy. Instead, the calculation should relate to how much of the global budget it can still take up, taking into account fairness considerations.

18 As Switzerland submitted already in February 2025,[5] the planned emissions amount to 0.33% of the global budget (0.66 Gt CO_2eq for the period 2020-2050), this even though Switzerland represents only 0.11% of the global population. In the June 2025 Communication, the timeframe and the

[5] DH-DD(2025)183, 1521e réunion (mars 2025) (DH) - Règle 8.2a - Communication des autorités (14/02/2025) relative à l'Verein KlimaSeniorinnen Schweiz et autres c. Suisse (requête n° 53600/20) [French only].

calculated amount of emissions have only been adapted respectively to 0.62 Gt CO_2eq for 2021-2025. Switzerland is therefore planning to generate three times as much GHG emissions as it would be entitled to, even according to a per capita distribution (see § 569), which would be the most lenient possible methodology to calculate a national GHG budget on the basis of a global budget.

19 We fail to see how this could be compatible with the common but differentiated responsibility principle, recently reaffirmed by the ICJ as "a core guiding principle for the implementation of climate change treaties" (ICJ AO obligations of States in respect of Climate Change § 148). The ICJ insists that historical responsibility and economic and social development matter: "In the view of the Court, the principle of common but differentiated responsibilities and respective capabilities reflects the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account, *inter alia*, States' historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development" (ICJ AO obligations of States in respect of Climate Change § 148).

20 Switzerland insisted in its first submission to the Committee of Ministers that there is no consensus on the methodology of calculating a national GHG budget (action report, chapter 5.2.5, p. 11). This is certainly true. Nevertheless, the Court has identified methodological starting points such as the common but differentiated responsibility principle, equity, and the capability approach 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). What is more, Switzerland mentions, in its June 2025 Communication, an 'implicit budget'. The argument that an agreed methodology is needed to provide a budget is therefore somewhat contradictory because even an 'implicit budget' requires some sort of methodology, be it only implicit or rudimentary.

21 Finally, a continued dialogue between the Court and the State parties on what amounts to a methodology to calculate a State parties' fair share of a global GHG budget – and thereby developing an emerging European consensus on a methodology compatible with the obligations in the Convention – certainly is one of the most central potentials of the jurisprudence that took its origin in KlimaSeniorinnen v. Switzerland. For this jurisprudence to bear fruit, it is crucial that the respondent State party comes forward with and defends an explicitly chosen methodology.

22 As stressed in our first rule 9(2) submission (January 2025 Rule 9(2) Submission para. 39), this particular point has substantial systematic ramifications. If Switzerland's method of budgeting by accumulation of planned emissions were permissible under the Court's jurisprudence, this would be imitated by other states. As a result, it would deprive the method of carbon budgeting of any potential effect to combat one of the most central problems in climate change mitigation: the collective action problem that every state can shift the burden of GHG reduction to other states.

23 In addition to these considerations regarding the emission reduction targets, it remains unclear whether the measures adopted so far would be sufficient to fulfil the targets defined by Switzerland. The regulatory gap from 2025 to 2030 has been closed thanks to the new legislation. However, no independent scientific analysis confirms that the measures envisaged therein can lead to a 50% reduction in emissions by 2030. Switzerland should present such an analysis to provide the needed evidence.

ad. 2.1 Additional information on implementation measures at federal and cantonal level (orig. Informations complémentaires sur les mesures de mise en œuvre aux niveaux fédéral et cantonal)

24 Concerning the principle of subsidiarity (Art. 5a and 43a(1) Federal Constitution), Switzerland argues in its June 25 communication that it is important to take the cantonal level into account when evaluating its implementation measures: in addition to the measures implemented at the federal level, climate policy actions undertaken at the cantonal level also "contribute" to achieving Switzerland's climate targets (Art. 12(1) Climate Act). While this assertion is correct, the overarching responsibility for establishing the framework to limit Switzerland's emissions rests with the Federal Council and Parliament. Studies show that the cantons generally do not go beyond the national targets but essentially adhere to the Swiss reduction path.[6] Given that this reduction path is too slow to respond to Switzerland's obligation under the Convention, cantonal efforts add little to Switzerland's compliance with its obligations.

Associations' right of access to a court

ad. 5 Associations' right of access to a court (Droit d'accès des associations à un tribunal)

25 Regarding the violation of Art. 6, Switzerland invokes in its June 2025 Communication two arguments: It refers to a yet unpublished report solicited from the Federal Department of Justice and Police (FDJP) and to a court case pending before the Swiss Federal Administrative Court. While a report on associations' access to court in a climate context is certainly useful and welcome, it remains unclear why a report must be awaited to grant associations in cases analogous to KlimaSeniorinnen access to courts. The obligation to do so stems directly from the binding nature of the Convention and the jurisprudence of the Court, and not from the outcome of a report or a possible legal reform. While such a reform may be warranted to render this particular form of access to courts explicit, courts ought to grant such access directly based on the jurisprudence of the ECtHR if the criteria set out in KlimaSeniorinnen are fulfilled in the case at hand.

26 The possibility that a competent court will acknowledge this direct effect and grant associations direct access to court remains intact. It is unclear, however, whether the Federal Administrative Court will have to address this issue in the case referred to by the Government, given that the associations in this case might not fulfil all the criteria as set out in KlimaSeniorinnen (§ 500-502).

27 However, even if a court were to decide the matter in a domestic context in the foreseeable future, it seems more than questionable whether a State Party to the Convention fulfils its obligations under Art. 46 ECHR by shifting the responsibility for the implementation of an aspect of a judgment to the Courts, while at the same time, both the Government and Parliament[7] issued declarations that made it explicit that Switzerland will not accept a new form of collective action as a result of KlimaSeniorinnen. Such declarations impose a problematic chilling effect on those courts that will

[6] See the rating of cantonal energy and climate policies by WWF of August 2024 (https://www.wwf.ch/sites/default/files/doc-2024-08/2024_WWF_Kantonsrating.pdf; consulted on 29 July 2025), p. 7.
[7] See the declaration of the Federal Council of 28 August 2024 https://www.news.admin.ch/de/nsb?id=102244 (last visited 29 July 2025), and the debate in the Senate on Klimaseniorinnen on 5 June 2024, Official Bulletin Senate, AB S 2024 pp. 454ss. https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=64711 (last visited 29 July 2025).

be first confronted with the problem of how to grant access to court in a case analogous to KlimaSeniorinnen.

28 This is even more so as the pending court case referred to by the government has its origins in the decision of a governmental agency, the Federal Department of Environment, Transport, Energy, and Communication (DETEC). The DETEC was approached by different associations of smaller-scale farmers with a demand analogous to that of the initial demand of the KlimaSeniorinnen, which was also directed at the DETEC (§ 22). Albeit subsequent to the Judgement in KlimaSeniorinnen, the decision by DETEC now pending before the Federal Administrative Court does not assess the findings of the ECtHR regarding access to court and essentially reiterates the arguments it already applied to reject the standing of the Association KlimaSeniorinnen, among them the so called "drop in the ocean"-argument which the Court has explicitly rejected (§ 444). The only reference to KlimaSeniorinnen in the DETEC decision is a mention of the declaration of the Federal Council on KlimaSeniorinnen of 28 August 2024,[8] rejecting any new form of access to court as based on KlimaSeniorinnen. This means that on the one occasion, when the government exercised direct influence over the establishment of access to Courts, as required by KlimaSeniorinnen, it opted to do the opposite – openly discouraging and ignoring the Court's judgment.

29 While it is not for the government to instruct courts on how to implement the Judgment, it is also vital that the government refrains from any form of discouraging the implementation by courts directly based on the Jurisprudence of the ECtHR. The Committee of Ministers should therefore urge the Government of Switzerland to revoke all declarations to the effect that Switzerland will not take any further measures to implement the Judgment, particularly those asserting that it will not accept new forms of collective action in the context of climate change.

Conclusion and recommendations to the Committee of Ministers

30 Based on the analysis of the additional information presented by Switzerland on 23 June 2025, the SHRI respectfully submits the following substantive and procedural recommendations to the Committee of Ministers.

The SHRI recommends that the Committee of Ministers

- → emphasises the pressing urgency and risks to human rights posed by climate change;
- → invites Switzerland to provide an appropriate, Convention-compatible domestic carbon budget;
- → 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 based on which Switzerland has determined its fair share in relation to the share of other States;

[8] Declaration of the Federal Council of 28 August 2024 https://www.news.admin.ch/de/nsb?id=102244 (last visited 29 July 2025).

- → 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 based on 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 quantification of a fair 1.5° compatible national carbon budget, including the methodology chosen;
- → 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;
- → requests Switzerland to explain 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 supervise the execution of the Judgment;
- → invites the Government of Switzerland to revoke all declarations to the effect that Switzerland will not take any further measures to implement the Judgment, and especially that it will not accept new forms of collective action in the context of climate change.