

# KlimaSeniorinnen v. Switzerland: Where does Switzerland stand on Justice and Fairness?

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**The hearing of the KlimaSeniorinnen's case against Switzerland before the European Court of Human Rights (ECtHR) has attracted a great deal of international attention. Now we know in detail what questionable arguments Switzerland used in Strasbourg to defend its climate policy.**

The public hearing of the two parties on 29 March 2023 before the Court in Strasbourg, should have been the final round in the climate seniors' case. Switzerland had to explain its climate goals to the 17 judges and the people, and to set out exactly what it is doing to solve the greatest threat to human rights. But instead of that, just before the hearing, Switzerland submitted another [written presentation](#) in which it explained for the first time the considerations behind its planned climate goals.

## An extraordinary approach

On 16 March 2023, two weeks before the hearing, the Court sent three [questions](#) to the parties by letter. Since the exchange of written submissions was already completed by 5 December 2022, the Court explicitly requested that these questions should be answered *orally* before the 17 international judges on the day of the hearing. But Switzerland chose to respond in writing rather than verbally.

What were these questions about?

Two of the Court's questions go to the heart of the demand for climate protection because worse human rights consequences can only be averted if all States do their part. Since it is generally well known how much greenhouse gas can still be emitted (the so-called Carbon Budget) in order to limit the global temperature rise to 1.5°C, the Court wanted to know whether and how Switzerland had calculated and taken its remaining Carbon Budget into account when setting its climate targets.

As mentioned, Switzerland answered the three questions in writing instead of orally, contrary to the Court's request. The KlimaSeniorinnen's legal team received a [printed version](#) of this submission on the day of the hearing. In total, Switzerland wrote six pages and submitted two annexes totalling around 80 pages ([Annex 1- Policy Brief](#) and [Annex 2 - internal working document](#) (in german)). The Court accepted the written submission and granted the KlimaSeniorinnen the right to respond in writing to the unforeseen Swiss statement by 28 April 2023.

## Looking for answers

### **What does Switzerland say in response to the Court's precise questions?**

**In short, it gives no concrete answers.**

Switzerland writes: Its current emission targets for 2030 and 2050 are a fair contribution to limiting the global temperature to below 1.5°C. In assessing fairness, principles were taken into account, such as Switzerland's responsibility for its emissions or Switzerland's options for action as a rich country. However, Switzerland also emphasises that, as a country with a small population, it causes only a small proportion of global emissions, that the per capita emissions of the Swiss are below the global average and that the costs of further reductions are high.

Switzerland does not provide a concrete calculation, a quantification or even a mere assessment of whether the problem could be solved with this Swiss interpretation of climate responsibility. Not a word about the fact that the approach chosen gives Switzerland a massive advantage over countries with fewer emissions. It also fails to provide evidence that further emission reductions in Switzerland, as a very rich country, would cause disproportionately high costs. Moreover, Swiss emissions over the past 60 years have been below the global average for only seven years (see following graph).

To underpin its position, Switzerland submitted a 60-page internal working paper on ethical and moral principles on climate protection, but at the same time stressed that this paper did not reflect the government's views. We don't know why it was submitted.

Switzerland further claims that any attempts to quantify a national fair share are inherently subjective. Without further ado, they deny the scientific basis of the studies submitted by the KlimaSeniorinnen, without presenting any evidence to the contrary. At the same time, these studies set out transparently and conclusively how the remaining CO<sub>2</sub> budget should be distributed fairly while respecting internationally recognized legal principles.

Despite the claim of fundamental subjectivity, Switzerland submitted a study from 2012. 2012 is three (!) years before the conclusion of the Paris Agreement. Indeed, in this study, carbon budgets for a number of countries are calculated based on principles of equity. However, one looks in vain for a number for Switzerland.

Interim conclusion: Switzerland argues a) that principles of justice should also be applied, which favour rich countries with high emissions and b) that a kind of quantitative analysis of the global CO<sub>2</sub> budget was included in the analysis for setting its own targets. Switzerland does both without becoming specific, citing current figures or relevant scientific studies and completely without discussing the global implications of its own approach.

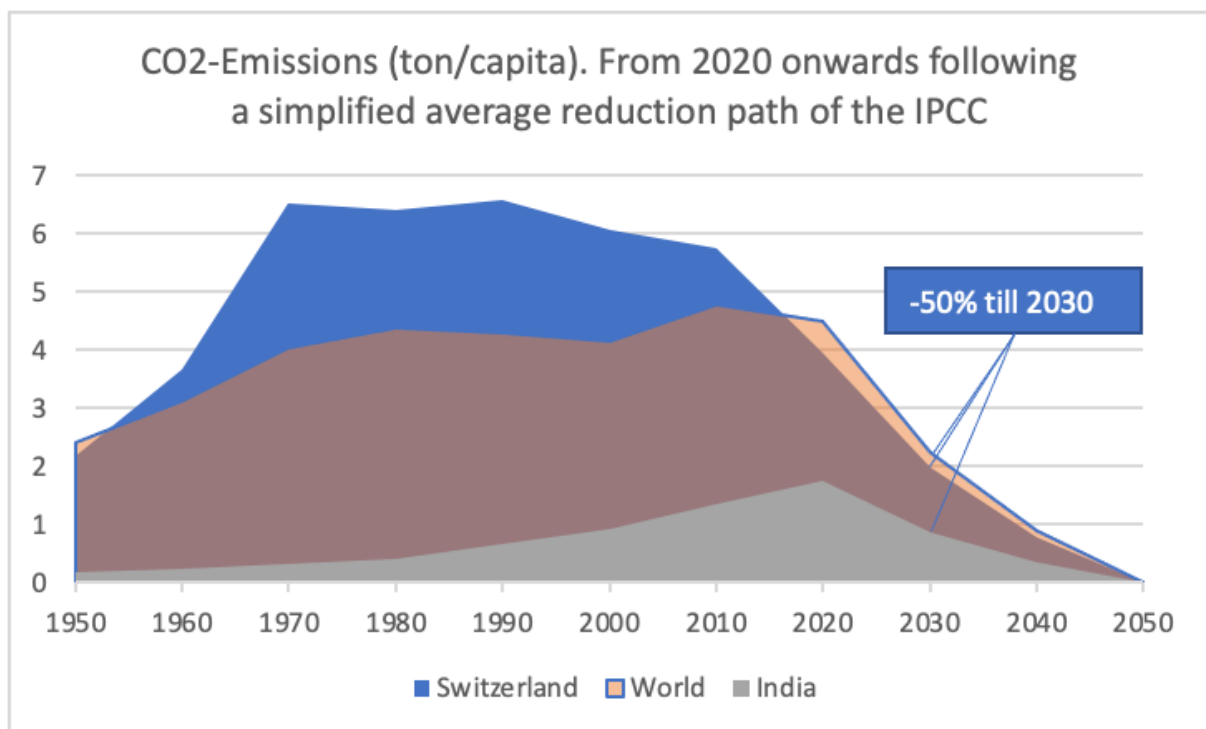
### **Alignment with global reduction pathways: Unfair.**

In its additional statements, Switzerland now provides a kind of derivation of its own climate goals. It points out that the Swiss targets relate to the global reduction pathways from the IPCC reports. Switzerland's simple derivation: If the world needs to reduce emissions by

50% by 2030 and to net zero by 2050, so as not to exceed 1.5°C, then Switzerland must do the same.

This approach is captivating in its simplicity, but it is not fair. Because such an approach gives Switzerland a massive advantage over all countries that have previously caused fewer emissions and it cannot be rationally explained using principles of justice and fairness. The Swiss approach means that an excessive amount of the remaining global CO2 budget goes to rich countries with high emissions. Poorer countries should therefore get by with less than we, who have become rich through the excessive burning of cheap fossil fuels.

The graph below illustrates this advantage. It shows the past and future per capita emissions according to the approach followed by Switzerland. This means that in the future more emissions will continue to be caused in this country than in India, for example. And something else is striking: the approach conceals all responsibility for the emissions that have already taken place. According to the logic: those who already consume a lot and have high emissions should be allotted more in the future. What is just and fair about the fact that a person in this country uses more than twice the global budget than a person in India or in hundreds of other countries?



**To sum up:** Switzerland claims before the highest human rights Court in Europe that the solution to the greatest threat to human rights cannot be approached reasonably. It asserts:

- *first*, that determining the equitable contribution to solving the collective problem should also take into account principles that favour rich, highly emitting countries,
- *secondly*, that the widely supported scientific studies cited by the KlimaSeniorinnen to underpin their quantitative demands of Switzerland are subjective,
- *thirdly*, that a single outdated study by one person can be used as a basis, and

- *fourthly*, that a “fair” contribution is arrived at by pursuing average global reduction pathways.

Switzerland does all this against the backdrop of the latest IPCC report, which unequivocally states that so far 80% of the global budget for compliance with the 1.5°C limit (with a 50% probability) has already been used and that, at current emission levels the remaining budget will be exhausted before 2030.

It would be in the highest interest of Switzerland and its inhabitants that worse climate catastrophes are prevented. We are already seeing serious consequences of climate change everywhere and know that a temperature rise of more than 1.5°C will be extremely dangerous for all living beings. Yet Switzerland claims to be committed to the 1.5°C target but presents an approach that, if all countries act comparably, will lead to a world that is up to 3°C warmer. This is a world in which human rights can no longer be adequately protected.

## **The KlimaSeniorinnen’s Reply**

The KlimaSeniorinnen's legal team has [responded](#) to Switzerland's written submission, demonstrating point by point that the Swiss government’s approach is unjust, unfair and not aligned with containing global warming to a maximum of 1.5°C. Specifically, the lawyers have:

- submitted the calculations missing from the Swiss CO2 budget, based on calculations by recognized scientists ([expert report](#));
- explained in detail why aligning towards the average of the globally necessary reduction pathways is not 1.5° compatible and does not represent a fair share of global climate protection efforts;
- pointed out what the IPCC and well known scientific experts say about the fair sharing of the reduction burden and cost efficiency; and
- pointed out how the highest courts of other countries have completely rejected attempts at justification such as those now presented by Switzerland.

It is now up to the 17 judges of the ECtHR to carefully examine Switzerland's arguments and deliver their judgment on the matter.