

ECtHR Favours 1.5-Degree Limit

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The European Court of Human Rights (ECtHR) has ruled in [Verein Klimaseniorinnen Schweiz and Others v. Switzerland](#) that the protection of life and health under Article 8 ECHR against climate change requires states to respect the 1.5-degree Celsius limit for global warming set out in Art. 2 para. 1 Paris Agreement. With the 1.5-degree limit, the ECtHR goes even further than the (arguably) most discussed verdict of a supreme court worldwide on climate protection to date: [Göppel and Others \(sometimes wrongly called Neubauer\)](#) of the German Federal Constitutional Court (FCC) of 24/03/2021. This blog post analyses this fact and the 1.5-degree limit – that has not been discussed [in an earlier blog post on this ruling](#) –, its major challenge for climate policy and the indirect transferability of this to other environmental problems. The question of 1.5 degrees is the crucial point of the verdict because it defines the level of ecological ambition that the court demands as a minimum from environmental policy.

The 1.5-Degree Limit

The ECtHR emphasises more clearly (in para. 436 and 558 of the *Klimaseniorinnen* case) that 1.5 degrees is the maximum limit of tolerable global warming if we do not want to risk catastrophic consequences such as constant massive natural disasters or food and water shortages. The basis for this is the IPCC finding “that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target“ (para. 436). The ECtHR has now gone a little further than the FCC as we will see in the following: In 2018, together with the environmental organisations Friends of the Earth Germany and Solar Energy Association Germany, attorney Franziska Heß and I filed the respective climate action with the FCC – later supported by further actions pushed by other associations such as Fridays for Future and Greenpeace. The result was the historic FCC ruling in 2021: [Germany must do more to protect the climate](#) because it prioritises the economic freedom of today’s generations too one-sidedly over the freedoms of future generations. In contrast, the FCC (in para. 175 et seq. of the verdict) had indicated in 2021 that 1.75 degrees could perhaps also be the limit, because the Paris Climate Agreement speaks of “well below 2 degrees” as the target, although the agreement adds that states must pursue “efforts” to achieve 1.5 degrees.

Given the 1.5-degree limit, governments and parliaments, especially of industrialised states, must step up their climate protection efforts now. According to the IPCC data presented in 2022 (referenced and analysed [here](#)), those states have in most cases already exhausted their [greenhouse gas \(GHG\) budget for 1.5 degrees](#). The 1.5-degree limit can be used to calculate an approximate residual GHG budget, based on an equal per capita distribution of the remaining global budget. The IPCC indicates a total global residual budget of 300 GtCO₂ with a probability of 83% for

complying with 1.5 degrees from January 1, 2020. Using a per capita approach, this would mean a remaining 3 GtCO₂ for Germany, which accounts for one hundredth of the world's population. Germany, for example, has already consumed this amount.

Radical Implications of the Limit – and Overlooked Consequences?

If, like Germany, states plan to be climate-neutral – including [zero fossil fuels and a drastic reduction of livestock farming](#) – not earlier than 2045 (or 2050, like the European Union has committed to in Art. 1 [European Climate Law](#)) and then even miss their own inadequate (intermediate) targets, they are completely ignoring that the budget has already been used up. This is especially the case as the budget presented above even contains very favourable assumptions for industrialized states. For example, international climate law implies redistributing the budget in favour of the countries of the Global South, which have a lower economic capacity and have also contributed much less per capita to climate change: The reference to capacities and the polluter pays principle is clearly stated in Art. 2 para. 2 and 4 para. 4 Paris Agreement as well as Art. 3 para. 3 UNFCCC. In addition, not only the Paris Agreement, but the [German constitutional law \(when interpreting the FCC ruling and its reference to Art. 2 para. 1 and other norms of the Basic Law, which is the German constitution\) demands more ambition](#) in climate protection.

The ECtHR – and FCC – do not overlook the fact that in democracies, the right climate policy is first and foremost a matter for elected politicians. However, if parliaments and governments disregard certain limits to their balancing leeway, especially with regard to future generations, who often have no voice in political discourse that is fixated on the present, they can be sued before a constitutional court – also for not protecting the climate sufficiently. In all of this, the ECtHR has by no means overlooked the difficult geopolitical situation in the world. However, climate protection is by no means contrary to other requirements. On the contrary, an accelerated phase-out of fossil fuels is more necessary than ever due to the increasingly warlike global situation. Europe is currently de facto supporting the Russian war machine, for example, by continuing to consume fossil fuels diligently, now instead of direct Russian imports, for example liquefied natural gas from India, which in turn obtains its gas from Russian state-owned companies. The ECtHR (as well as the FCC) has therefore understood something that politicians in almost all countries still fail to realise: climate protection is the protection of freedom. And climate protection is also far more favourable economically than running into the horrendous costs of climate change.

1.5 Degrees and other Goals in International Environmental Law

The 1.5-degree limit is extremely challenging in itself because (as shown) it requires climate neutrality in the near future and thus zero fossil fuels and a sharp reduction in livestock farming. This alone can have [a very favourable effect](#) on other ecological challenges such as the loss of biodiversity, the pollution crisis or the disrupted nutrient cycles, as fossil fuels and livestock farming also play a central role in these areas. Moreover, the argument that combines a legally binding international environmental law goal with human rights can also be applied directly to at least one

other environmental problem, as will be shown below. This is also important because in the public ecological debate very often shows a bias towards climate change.

The analysis on climate change, human rights and international environmental law may especially [apply also to biodiversity loss](#). Here, the planetary boundaries – i.e., the limits of what is still sustainable for human life on Earth in the long term – [have been exceeded even more clearly](#) than in the case of climate change, according to the [unanimous opinion of the natural sciences](#). In particular, the loss of biodiversity and ecosystems has serious consequences for human life and therefore also for human rights, as it has a negative impact on the stability and continuity of ecosystems and on the provision of goods and services on which humanity depends, such as soil fertility, pollination and oxygen production. This constitutes a violation of Art. 8 ECHR.

In parallel to the 1.5-degree limit in Art. 2 para. 1 Paris Agreement, Art. 1 CBD obliges states to immediately halt and reverse the loss of biodiversity (see in detail on the following, with further references: [here](#)). This stop target for biodiversity – which can interact with human rights in a similar way to the 1.5-degree threshold – is even easier to grasp than the temperature limit for the climate, despite the heterogeneity of biodiversity: if the obligation to stop the loss of biodiversity has already existed for at least 30 years (the CBD came into force in 1993) and the problem is constantly worsening in nearly all states on a worldwide scale, it is far more concrete than a temperature target – and without the need for complex considerations of a remaining greenhouse gas budget or similar.

The fact that the legislator in probably all states has not yet regulated either the halting of biodiversity loss or a comprehensive protection concept to achieve this gives the omission an extent that goes beyond the omission in climate policy. The legislative omission has the same character as if the legislator did not even strive for climate neutrality as a goal – as was cited by the FCC as a theoretical example of an evident violation of the right to life and health. The violation of human rights in the case of biodiversity loss is therefore more intense than in the case of climate change – which is all the more problematic as the ecological situation is more dramatic in the case of biodiversity loss than in the case of climate change.

To sum up: It is not only the 1.5-degree limit, which has recently been recognised in an advisory opinion by the [International Tribunal for the Law of the Sea](#), that requires a significantly stronger environmental policy. The same also applies to other, even more dramatic environmental problems.

