Death by a Thousand Cuts

How Switzerland Keeps Resisting the KlimaSeniorinnen Judgment and Why Strasbourg Struggles to Respond

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On 30 September 2026, the Swiss Federal Council informed the Committee of Ministers (CoM) of the Council of Europe that it would not set up an independent climate council. A year earlier, the CoM had invited Switzerland to consider such a body, as part of its supervision of *KlimaSeniorinnen* – the first binding international judgment to find a state in breach of its climate obligations. Switzerland's recent refusal is not an isolated phenomenon but part of a pattern of resistance that has accompanied the judgment since its delivery in April 2024.

We show how the judgment has met resistance in three successive waves. The first is *procedural deflection*: having contested the judgment's legitimacy, the Swiss Parliament and the Federal Council presented it to the CoM as already implemented. The second is *substantive resistance* (here and here): the targets the Court found inadequate remained unchanged, while the very measures reported to Strasbourg as evidence of compliance were delayed, hollowed out or defunded at home. The third, and most recent, is what we call *institutional desiccation*: by refusing a climate council, Switzerland withholds the very institution that would make shortfalls visible. Each step may appear defensible in isolation. Together, however, they leave the judgment essentially unexecuted.

This puts the CoM in a difficult position. Its procedure is designed to assess individual measures, whereas the resistance we describe becomes visible only in their combined effect. How the CoM handles *KlimaSeniorinnen*, at a time of political pressure on the Court and on climate policy, will determine whether due diligence survives in execution. And the answer will matter well beyond Strasbourg, for due diligence has become the common language of climate obligations.

KlimaSeniorinnen in a Context of Backlash

KlimaSeniorinnen is the first case in which the European Court of Human Rights (ECtHR) had to decide whether the European Convention on Human Rights (ECHR) applies to climate change mitigation – and, if so, what precise obligations states face. The Court confirmed the former and formulated due diligence obligations under art. 8 ECHR. Advisory opinions by the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights and the International Court of Justice have since confirmed stringent due diligence obligations for mitigation. *KlimaSeniorinnen*, however, remains the only international judgment to have measured a state's concrete climate policy against due diligence and found it wanting. The Court found that Switzerland failed to quantify a carbon budget, set adequate interim targets, and meet its past reduction targets. Like any ECtHR judgment, *KlimaSeniorinnen* is binding under art. 46 ECHR and its execution is supervised by the CoM. The case is thus a key test of whether climate due diligence is honored in practice – and whether it can durably "human-rights-proof" domestic climate law and governance.

This test comes amid backlash against climate policy, human rights protection and international institutions. Around 12% of climate cases filed in 2025 sought to resist rather than advance climate action. This reflects what the Grantham Research Institute calls the "increasing scale, coordination and institutional depth of opposition to climate action." The ECtHR faces political pressure of its own: in May 2025, nine governments called for a "new and open-minded

conversation" about the interpretation of the Convention, a debate later channelled into the Chișinău Declaration. In response, as empirical research shows, the ECtHR has grown more restrained towards consolidated democracies.

The different forms of backlash (green, climate, institutional, and other) are often layered, feeding on and reinforcing one another. And *KlimaSeniorinnen* sits right at their intersection. It is at once a climate case, a human rights case, and a case about the authority of an international court over domestic democratic choices.

A Reliable Complier Turns Resistant

Switzerland has a generally solid reputation in implementing judgments of the ECtHR. To date, only nine per cent of cases remain under the CoM's supervision, and it implements landmark judgments in an average of one year and eleven months, against a Council of Europe average of six years and ten months.

Nevertheless, there are structural tensions between Swiss direct democracy and the ECHR: several popular initiatives (e.g. on minarets and deportation) raise issues of compatibility with the Convention. However, the Government and Parliament have always officially sided with the Convention, and popular initiatives aimed at restricting the scope of the ECHR have all failed.

The *KlimaSeniorinnen* ruling marks a turning point: rarely have the Federal Council and Parliament so openly resisted a judgment. They begin with *procedural deflection*, shifting the debate from what the judgment requires to whether the Court had the authority to issue it. Both challenged its legitimacy, accusing the Court of exceeding its powers and undermining democratic sovereignty (in reference to the public rejection of the CO_2 Act in 2021), while Parliamentary motion 24.3485 proposed a 17th Protocol to restrict the Court's interpretative powers. Before the CoM, Switzerland then submitted what it called "an action report" but which was in fact an "action plan", signaling that all necessary measures had been taken and supervision could be closed.

Beyond rhetoric and procedure, Switzerland has engaged in substantive resistance, rejecting or lowering the measures the judgment requires. No revision of the targets has been undertaken: Switzerland's "implicit budget" merely adds up planned emissions, like a household budget drawn from a spending wishlist. The Government also weakens the laws submitted to the CoM by delaying the entry into force of the implementing ordinances or by emptying them of their substance. And the 2027 Budget Relief Program (approved by Parliament in March 2026) cuts the very instruments presented as evidence of compliance, from the renovation incentive program to public transport and environmental education, while climate-harmful subsidies (private jets, agriculture) are preserved. To this day, the targets thus remain both inadequate and effectively unattainable. As Switzerland's top climate official put it himself, the country will "massively" miss its 2030 goals.

A Climate Council as Diplomatic Middle Way?

Against this record, the CoM's monitoring of KlimaSeniorinnen has taken a seemingly disappointing turn. The Committee took a strict line at its first meeting (March 2025), rejecting the Swiss claim that implementation was complete and demanding that Switzerland quantify its remaining emissions through a carbon budget or otherwise. It proved far more conciliatory at its second session (September 2025), accepting an "implicit carbon budget" of 620 Mt CO_2eq as sufficient, even though this was deemed non-compliant by civil society, legal scholars and the UN Special Rapporteur.

Still, the Committee has not closed supervision but proposed a diplomatic middle way, inviting Switzerland to set up an independent national body tasked with verifying the adequacy of the targets and pathways and highlighting any shortcomings in implementation. This middle way reflects the principle of subsidiarity recurringly emphasized by the Court. It is for Switzerland to establish a credible domestic framework enabling its own authorities, experts, courts and citizens to assess, over the long term, whether its climate policy complies with the requirements of the

Convention. A Swiss body would also address the structural limits of conventional monitoring in the face of the complexity of implementing climate policy and the insidious nature of regulatory and budgetary resistance in Switzerland.

Institutional Desiccation

Neither the judgment nor the CoM expressly prescribes a climate council, yet the question is not one of pure political discretion. Following the CoM's invitation, two expert reports examined what effective implementation requires institutionally. The first, a legal report co-authored by one of us, draws on art. 8 ECHR as interpreted in *KlimaSeniorinnen*, the CoM's decision and notes, the Paris Principles, applied by analogy, and the International Court of Justice's insistence on effective monitoring. It concludes that timely implementation, independent review and correction of climate policy require a permanent, independent, interdisciplinary and adequately funded body on a specific statutory basis, with a clear mandate to monitor, evaluate, report publicly and recommend corrective action.

Swiss experience painfully shows that a loose, consultative body does not suffice. The former Advisory Body on Climate Change (OcCC), lacking a statutory mandate and secure funding, was wound up in 2021 without parliamentary involvement. The report therefore recommends an extra-parliamentary commission with a "qualified duty to respond": if the council finds targets unlikely to be met, government and parliament must formally explain which additional measures they take – or why not.

In its submission of 30 September 2026, the Swiss government declined to establish such a body – against this report and the one it had commissioned itself. The environment minister's own party, the Swiss People's Party, had earlier mocked such a body as a "self-help group for the left-green climate alliance." Officially, Switzerland argues that a new body would offer only "limited added value", out of proportion to the "various additional burdens" it would entail. Yet such councils cost a few million francs a year, whereas unmitigated climate change will cost CHF 24 billion a year by 2060, by the government's own estimate. More remarkable still is Switzerland's claim that neither more knowledge nor greater recourse to science will make the difference – a curious position for a state whose climate policy was found wanting by a court insisting on the best available science. As a "better alternative", Switzerland proposes regular exchanges between the environment minister and the existing science–policy forum ProClim, and a promise to revisit evaluation in the next CO_2 Act. The CoM, however, had already found that such structures cannot assume the job of an independent monitoring body. Tellingly, ProClim itself has since publicly stated that it lacks any such mandate and that Swiss climate policy would benefit from systematic and independent evaluation.

Switzerland's refusal is the third wave of resistance, which one could call *institutional desiccation*. It targets the bodies, mandates and feedback loops through which targets are checked and implementation failures made visible. Without them, non-compliance goes unseen and the government loses its capacity to correct course. Like the United States, which dismissed the authors of its National Climate Assessment and announced its exit from the Intergovernmental Panel on Climate Change, Switzerland is dismantling such mechanisms – even if in a more subtle way. Policy scholars speak of "dismantling by default" (here and here) – decline through neglect and non-adjustment rather than open abolition. Constitutional scholars call it "constitutional retrogression": the incremental erosion of institutions behind a seemingly lawful façade.

Testing the Convention System

What began as a litigation win by the book is at risk of a death by a thousand cuts. After initial open defiance, Switzerland's tone has become more deferential. It pays just satisfaction, reports on time, and engages with the CoM. Behind this cooperative surface, resistance has continued in three waves: procedural deflection, substantive resistance, and institutional desiccation. Each step may appear defensible in isolation. Their cumulative effect, however, is that the judgment is left largely unexecuted.

The CoM's supervision is poorly equipped for such layers of resistance. It typically proceeds issue by issue, and it has already deferred once: by accepting Switzerland's "carbon budget" (by name only) without insisting on the Court's requirements for quantification, it effectively closed its review of quantification. What remains open – implementation, access to court and a climate council – cannot tackle the combined effect of the three waves. *KlimaSeniorinnen* thus tests the Convention system on two fronts: whether it can withstand open defiance at a time when backlash against climate policy, human rights and international courts is mutually reinforcing, and whether it can respond to more covert but incremental forms of resistance.

At its next examination of the case, the CoM need not insist on any particular institutional form. It should, however, insist on effectiveness and assess Switzerland's measures as a whole. If Switzerland rejects an independent body, it must show how else fair share targets will be set, implementation effected, deviations detected, and corrective feedback loops triggered.

In the end, while the primary obligation of climate due diligence rests with the state, there is no single institution that can secure it on its own. Climate due diligence is a collective task. Courts may define what it requires, and the CoM may check whether it is met. Yet between judgments and supervisory meetings lie long stretches in which others must keep the larger picture in view. It is for applicants and NGOs to document shortfalls, for scientists to measure them, for parliamentarians and the administration to correct them without delay, and for domestic courts and the public to hold government to its word. An independent climate body would have been the one actor able to keep that picture in view continuously, tracking shortfalls and pressing for their correction. Switzerland's refusal does not make this work disappear. It scatters it across actors with far fewer means to do it.

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