



Universität St.Gallen

Institut für Law and Economics

# Global Tax Justice – The Role of Courts

Collegium Helveticum

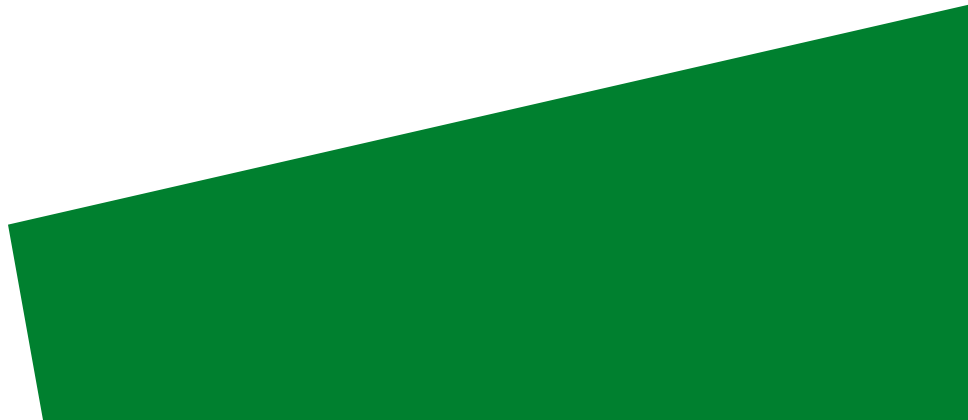
Zurich – 27 May 2024

From insight to impact.

# Agenda

1. The International Constitution
2. The Past
3. The Present
4. The Future

# The International Constitution

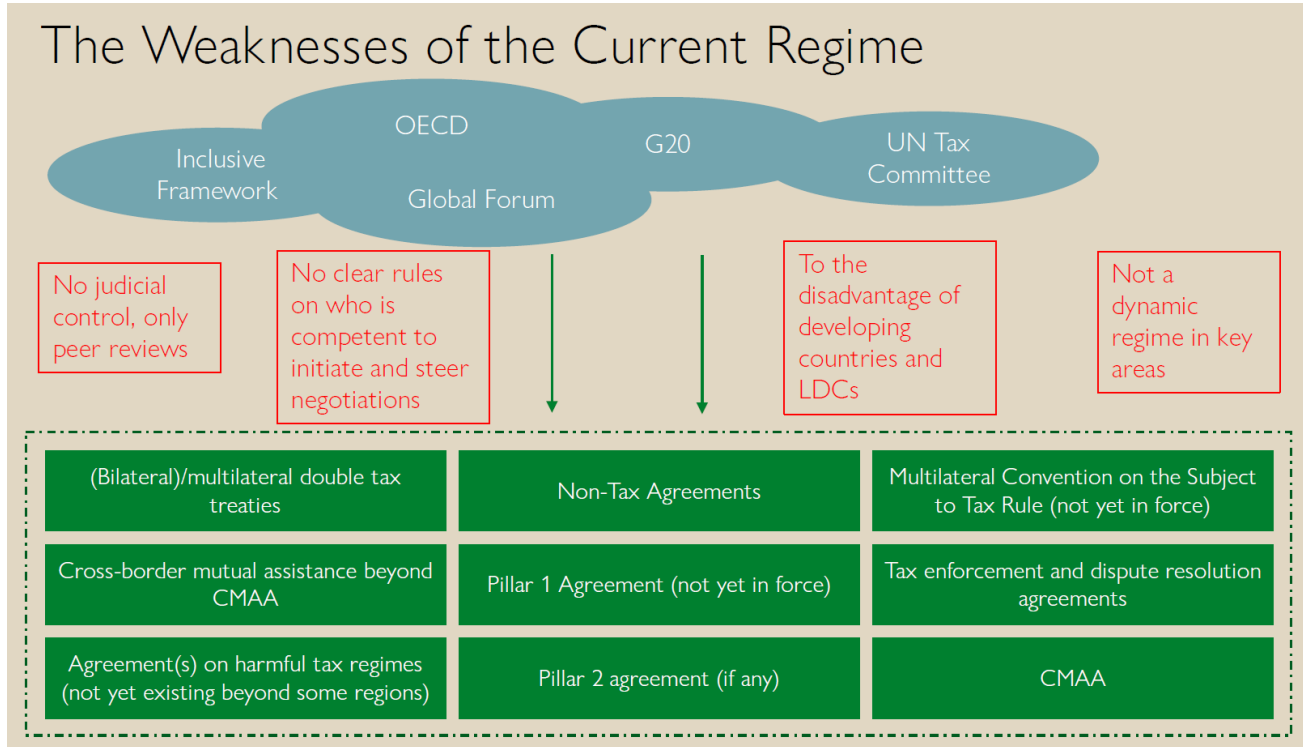


# The International Constitution

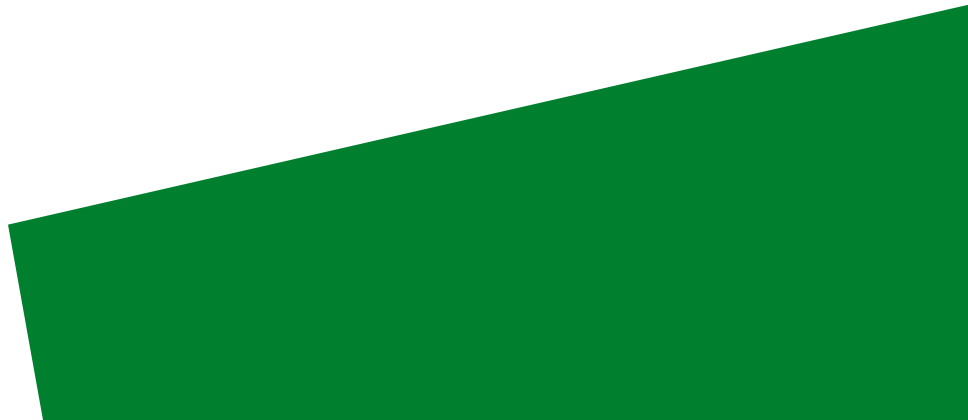
- Constitutions contain:
  - Institutional/organizational rules
  - Value-based rules (e.g. human rights, community rights)
- Institutional elements:
  - OECD/G20/IF act as a quasi-legislator
  - OECD/G20/IF have de facto executive powers – peer review process!!
  - Judicial control does really not exist
- **No normative claim whether we need more constitutional elements in the future**
- **But: If tax policy becomes more global, a claim for more judicial control seems persuasive**



# The International Constitution



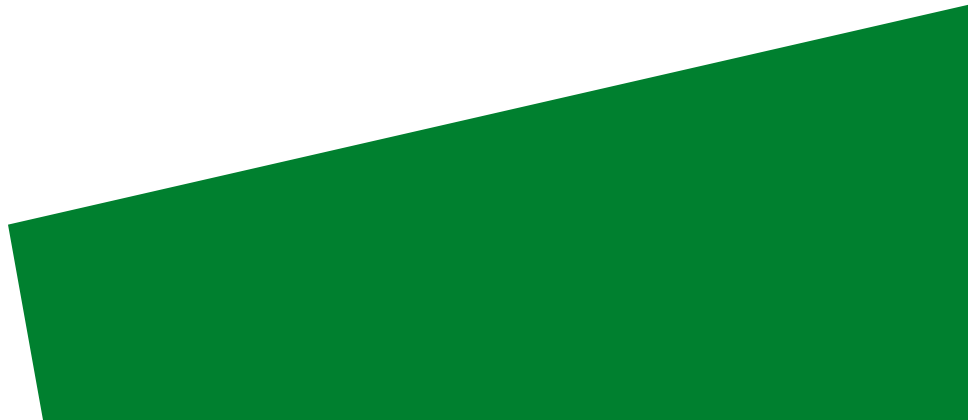
The Past



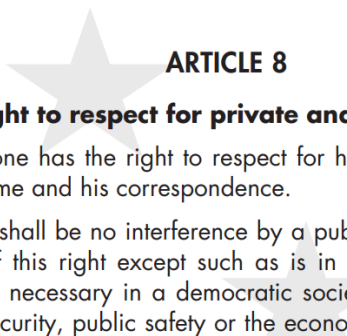
# The Past

- Permanent Court of International Justice (PCIJ) / International Court of Justice (ICJ) – Lotus, Nottebohm, etc. – mainly: limits of jurisdiction-to-tax
- WTO Bodies – various decisions
- Investment Arbitration – RosInvestCo UK Ltd v The Russian Federation , EnCana v Ecuador, etc.
- (tax arbitration)

The Present



# Verein Klimaseniorinnen Schweiz and Others v. Switzerland

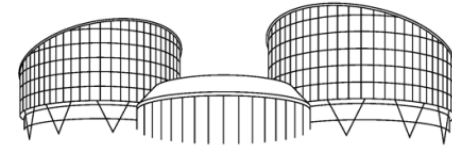


## ARTICLE 8

### Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Not covered: Art. 6 ECHR



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

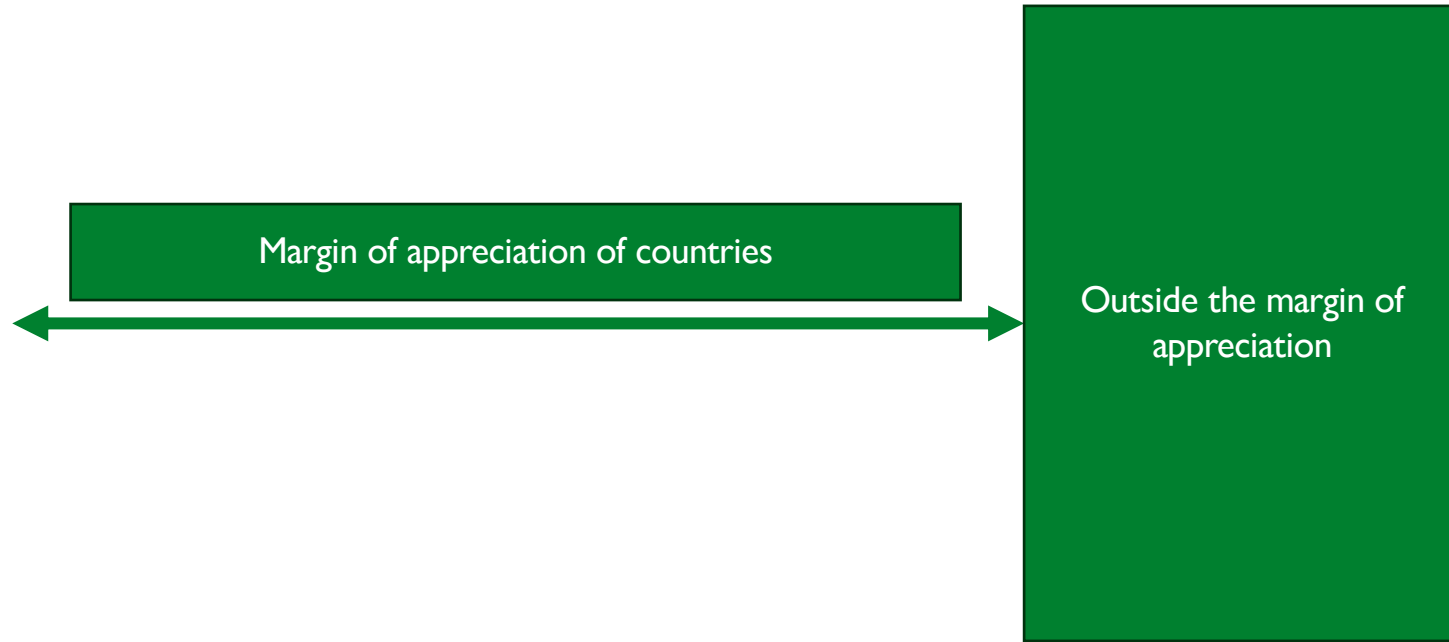
GRAND CHAMBER

**CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ  
AND OTHERS v. SWITZERLAND**

*(Application no. 53600/20)*

JUDGMENT

# Verein Klimaseniorinnen Schweiz and Others v. Switzerland



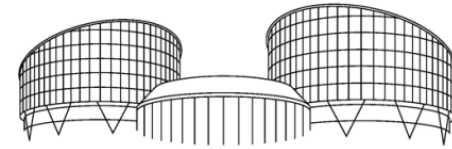
# Verein Klimaseniorinnen Schweiz and Others v. Switzerland

550. When assessing whether a State has remained within its margin of appreciation (see paragraph 543 above), the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to:

- a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, 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;
- b) set out 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;
- c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);
- d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and
- e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

# Verein Klimaseniorinnen Schweiz and Others v. Switzerland

- 573. In conclusion, there were some critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, **including** a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Furthermore, the Court has noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets (see paragraphs 558 to 559 above). **By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework, the respondent State exceeded its margin of appreciation and failed to comply with its positive obligations in the present context.**
- 574. The above findings suffice for the Court to find that there has been a violation of Article 8 of the Convention.



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

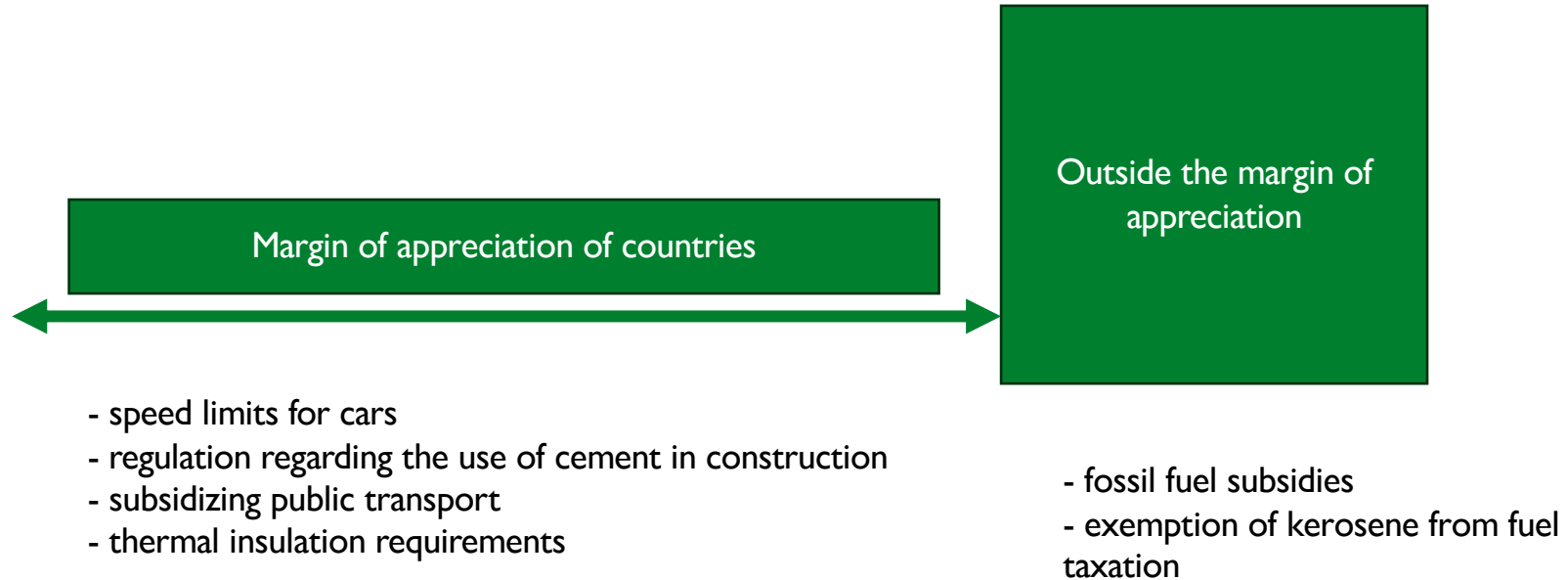
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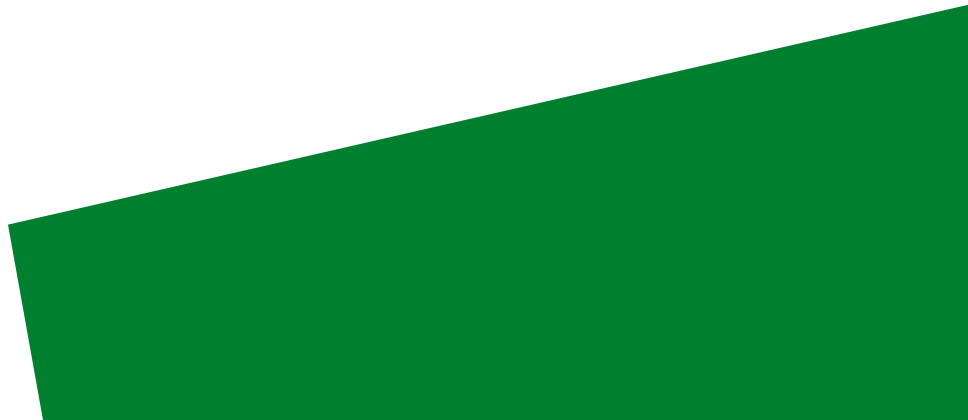
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JUDGMENT

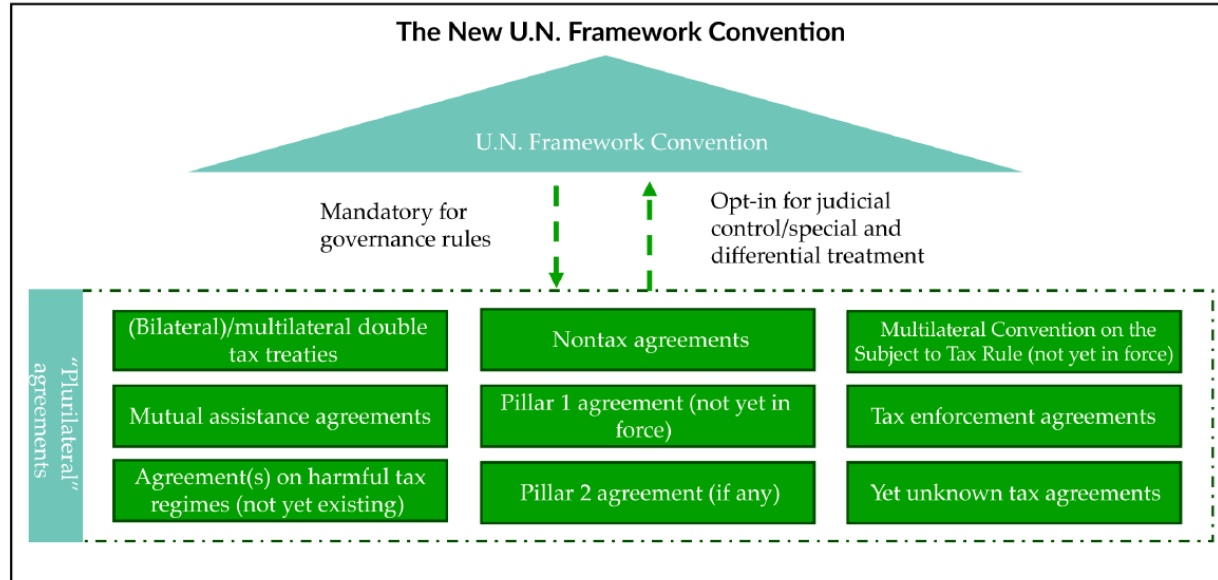
# Verein Klimaseniorinnen Schweiz and Others v. Switzerland



The Future



# The Future



# Thank you!!



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Steuerrecht / Direktor

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