

not refer exclusively to the GHG ceilings set out in the KSG 2011. De lege lata, these ceilings do not need to be updated or adapted to the applicable requirements of EU law.

As already explained in detail in section 5.1.1, according to Article 1 of the Federal Constitutional Law on the Rights of the Child and Article 24 (1) of the Charter of Fundamental Rights, the state has a **genuine duty to** safeguard the best interests of the child in all its aspects.¹⁸⁹ On the basis of this genuine duty to protect, the state is obliged, in order to safeguard the **best interests of the child**, to continuously implement effective climate protection and adaptation measures that prevent impairment of the best interests of the child or reduce them to the minimum possible. Climate protection measures must therefore be effective on the one hand (**effectiveness**) and be implemented on an ongoing basis on the other (**continuity**), so that the best interests of the child are safeguarded at all times and children are protected from dangerous situations that are already developing or foreseeable.¹⁹⁰

Since § 3 para. 1 KSG 2011 prevents the ongoing adoption of effective climate protection measures on the basis of updated GHG ceilings, the subjective rights of the applicants under Art 1 BVG Child Rights in conjunction with §§ 1 and 3 BVG Sustainability and Art 24 para. 1 GRC in conjunction with Art 37 GRC are also violated.

From the foregoing, it is clear that the applicants are in a class of their own.

§ 3 para 1 KSG 2011 are directly **affected in their legal sphere, which** is granted to them by Art 1 BVG children's rights or Art 24 para 1 GRC. In this context, it must be assumed that children are directly affected by the law, since in the event of a state failure to safeguard or protect the best interests of the child, children have never been able to assert blatant violations of their subjective rights to protection and care, the best possible development and protection of their interests, especially with regard to intergenerational justice.¹⁹¹ In connection with the applicants' rights to protection under Union law, reference should be made to the ECJ ruling on the *Janecek* case, according to which those directly affected must in any case be given the opportunity to assert the rights directly granted to them under Union law.¹⁹²

¹⁸⁹ See already in detail under point 5.1.1.

¹⁹⁰ See already in detail under point 5.1.1.

¹⁹¹ See already in detail under point 5.1.1.

¹⁹² ECJ 25.07.2008, Rs C-237/07, *Janecek/Byern*.

Furthermore, the applicants are legally affected - as already explained in section 5.1 - by the fact that § 3 para 1 KSG 2011 in its current version leads to the fact that, due to the impediment of taking effective GHG reduction measures, the associated burdens are transferred to younger generations in violation of the principle of equality.¹⁹³ This unobjective violation of **the requirement of equitable burden sharing** arising from Article 7 of the Federal Constitution and Article 2 of the Constitutional Law affects the applicants directly in legal terms.¹⁹⁴ § Section 3 (1) KSG 2011 in its current form therefore violates both the requirement of fair burden sharing resulting from the general principle of equality pursuant to Article 7 B-VG and Article 2 StGG and the **general requirement of objectivity**.¹⁹⁵ Against the backdrop of these considerations, the applicants are challenged by

§ Section 3 (1) of the KSG 2011 **directly affects their legal sphere, which is** conveyed to them by Article 7 of the Federal Constitution and Article 2 of the Constitutional Law.

Although the burdens associated with the climate crisis and the fight against it should be distributed equally among the population as a whole, taking into account the respective ability to pay, Section 3 (1) KSG 2011 in its current form places the main part of these burdens on the group of younger generations, to which the applicants also belong because of their age.¹⁹⁶ The applicants are therefore

§ Section 3 (1) KSG 2011 also **directly affects their legal sphere** in that they are violated in their right to equality before the law within the meaning of Article 7 of the Federal Constitution and Article 2 of the Constitutional Law, in that they, as a part of the total population of Austria to be treated equally, are treated unequally in relation to the older generations. There is neither a legitimate public interest in such unequal treatment nor would the unequal distribution of burdens be qualified as proportional.

5.5.2 Direct concern of the applicants in connection with the contingent application

As in the case of the main application, the applicants are not to be regarded as direct addressees of the provisions of Section 3 (1) KSG 2011 with regard to the contingent application.¹⁹⁷ However, the purpose of § 3 para 1 KSG 2011 is to ensure a coordinated implementation of effective GHG-regulations.

¹⁹³ See already in detail under point 5.1.2.

¹⁹⁴ See already in detail under point 5.1.2; see also *Poschl*, Gleichheit vor dem Gesetz (2008) 175.

¹⁹⁵ See already in detail under point 5.1.2.

¹⁹⁶ See already in detail under point 5.1.2.

¹⁹⁷ See already in detail under Punh. 1: 5.1.1; cf. VfSlg 13.558/1993; 10.511/1985; 8009/1977.

reduction measures in Austria.¹⁹⁸ Thus, Section 3 (1) KSG 2011 is also to be regarded as a simple statutory implementation of the rights granted by Art. 1 BVG in conjunction with §§ 1 and 3 BVG sustainability or Art 24 para 1 GRC in connection with Art 37 GRC.

genuinen duty of the state to protect the best interests of the child.¹⁹⁹

§ Section 3 (1) KSG 2011 in its current form is of no effect if negotiations on the adoption of climate protection measures pursuant to Section 3 (2) KSG 2011 take place if GHG ceilings have been specified in the annexes to the KSG 2011.²⁰⁰ However, § 3 para 1 first sentence KSG 2011 is **decisively**²⁰¹ worded, so that no obligation to create corresponding GHG ceilings can be derived from it (arg *"shall be determined in accordance with the annexes"*).²⁰² Therefore, it was possible without legal consequence that no GHG ceilings were set for the period after 2020 and therefore no negotiations on the adoption of climate protection measures elem § 3 para 2 KSG 2011 had to take place.²⁰³

However, the state's duty to protect the best interests of the child, as set out in section 5.1.1.a, requires the ongoing implementation of effective climate protection measures in order to protect the applicants from the consequences of the climate crisis in the best possible way.²⁰⁴

However, § 3 para 1 KSG 2011 directly interferes with and violates this right, as it prevents the adoption of effective GHG and continuous reduction measures.²⁰⁵ The **direct legal concern of** the applicants thus arises idZ already from the circumstance, class

§ Section 3 (1) of the KSG 2011 provides for the fulfillment of the state's ongoing duty to protect children.

and violates the children's constitutionally guaranteed rights.

However, due to its character, which prevents the adoption of effective climate protection measures, Section 3 (1) of the Climate Protection Act 2011 precisely leads to this **wise shifting of the burden to** younger generations. As already pointed out above, the merely declarative reference of Section 3 (1) of the Climate Protection Act 2011 to the establishment of GHG ceilings in the Annexes to the Climate Protection Act 2011 does not even allow for the mere obligation to negotiate effective climate protection measures.

¹⁹⁸ Cf. § 1 KSG 2011; EBRV 1255 BlgNR X, "(IV GP, 2 ff.

¹⁹⁹ See already in detail under Punl...t 5.1.1.

²⁰⁰ Cf. Section 3 (1) KSG 2011; for more details, see Section 5.3.1.

²⁰¹ And not as a target provision.

²⁰² Cf. Section 3 (1) KSG 2011; see already in detail under item 5.3.1.

²⁰³ Cf An11 and 2 KSG 201 L

²⁰⁴ Cf. Art 1 BVG Children's Rights iVm § 1 BVG Nachhaltigke1t; Art 24 para 1 GRC iVm A1t 37 GRG

10; Siebe clazu already closer under point 5.3.1.

Climate protection measures according to § 3 para 2 KSG 2011 apply as long as no GHG high value determination has occurred.

In a comparable manner, the applicants are limited by the ungrounded, unlawful, and thus **wisely unequal treatment of de facto equals** by

§ Section 3 (1) KSG 2011 in its current version **directly affects** the constitutionally guaranteed right to equality before the law within the meaning of Article 7 B-VG and Article 2 StGG.²⁰⁶ The group of younger generations can be distinguished from the older generations as a comparative group.²⁰⁷ However, due to the requirement of a fair distribution of burdens, the population as a whole would have to bear these burdens equally, taking into account the respective capacity to pay. § However, in its current form, Section 3 (1) KSG 2011 has the effect of shifting the burden of the climate crisis to younger generations, who have to bear it solely on the basis of their age, i.e. a characteristic that they cannot influence themselves.²⁰⁸

5.5.3 Current concern of the applicants with regard to the contingent application

The applicants' constitutionally guaranteed rights are already currently affected by Section 3 (1) of the KSG 2011 and not merely potentially. § Section 3 (1) KSG 2011 is currently in force and, in addition, directly interferes with the constitutionally guaranteed rights of the applicants by a qualified omission.²⁰⁹ This current direct encroachment on the legal sphere of the applicants is in particular due to the violation of the state's genuine duty to protect the best interests of the child under Article 1 of the Federal Constitutional Law on the Rights of the Child and Article 24 (1) of the European Convention on the Protection of Human Rights and Fundamental Freedoms, as explained above.²¹⁰ Likewise, § 3 para 1 KSG 2011 violates both the general requirement of objectivity resulting from Art 7 B-VG bzw Art 2 StGG, the requirement of fair burden sharing as well as the general principle of equality.²¹¹ In the case at issue, the applicants are affected by the effects of § 3 (1) KSG 2011.

5.5.4 Detour unreasonableness iZm with elem contingent application

²⁰⁶ See already in detail under point 5.1.2 and 5.2.2.

²⁰⁷ See clazu already in detail under points 5.1.2 and 5.2.2.

²⁰⁸ See clazu already in detail under points 5.1.2 and 5.2.2.

²⁰⁹ See clazu already in detail under points 5.1 to 5.4.

²¹⁰ See already in detail under point 5.1.1 and 5.2.1.

²¹¹ See clazu already in detail under Punh. 1: 5.1.2, 5.2.2, 551 and 553.

In order to assert the unconstitutionality of Section 3 (1) KSG 2011 in its current version, the applicants have neither the possibility to obtain a (declaratory) decision nor to take recourse to civil or criminal law.²¹² Neither Section 3 (1) I(SG 2011 nor the KSG 2011 in general opens up the possibility for the applicants to participate in administrative proceedings, nor does it give rise to civil law claims that could be asserted in court. Against this background, it is clear that there is no other way for the applicants to bring the unconstitutionality of the contested provision before the Constitutional Court.²¹³

6. Darlegung of material concerns

In the following, the concerns of the applicants against the contested parts of Section 3 (2) KSG 2011 are presented individually and in a structured manner. In the opinion of the applicants, the contested parts of the KSG 2011 are unconstitutional, in particular, because they violate their constitutionally guaranteed rights to the best interests of the child pursuant to Article 1 of the Federal Child Welfare Act (BVG KinderTechte), which is based in particular on the individual rights to the best interests of the child.

- Protection,
- Ftirsorge,
- best possible development, as well as
- Safeguarding the interests of children,

and must be interpreted as a whole with particular regard to the aspect of intergenerational equity.²¹⁴

The applicants' subjective right to choose the best interests of the child pursuant to Article 24 (1) GRC is also violated.

²¹² See already in detail under point 5.4.

²¹³ See <lazu already in detail under point 5.4; cf. also VfSlg 9394/1982.

²¹⁴ Cf. *Fuchs*, Kinderrechte in der Verfassung Das BVG -Ober dje Rechte von Kindern, 111: Lienbacher/Wielinger (eds.), Jahrbuch Offentliches Recht 2011 (2011) 91 (97 ff and 102 f).

In addition, the applicants' constitutionally guaranteed right to equality before the law pursuant to Art. 7 of the Federal Constitution and Art. 2 of the State Constitution are violated in the sense of the general principle of equality, the general requirement of objectivity that can be derived from it and the requirement of fair burden sharing.

§ Section 3 (2) KSG 2011 in its current form also contradicts the right of the applicants to appropriate participation and consideration of their opinion in all matters concerning them pursuant to Article 4 BVG Children's Rights.

The provisions of §§ 1 and 3 BVG Sustainability and Art 37 GRC are of fundamental relevance for the assessment of the unconstitutionality of the contested provisions. Although these do not represent subjective public rights to be directly asserted by the applicants, the contested provisions of the KSG 2011 also violate these (target) provisions, which is why they must be included in the assessment of the unconstitutionality of the contested provisions. Sections 1 and 3 of the Federal Constitutional Law on Sustainability also play a special role in the interpretation of subjective rights pursuant to Article 1 of the Federal Constitutional Law on Children's Rights, since they also refer to the principle of sustainability and intergenerational justice in the use of natural resources as well as to the preservation of the environment as a basis for life and thus establish the generation-appropriate use of resources as a **special public interest of** constitutional rank.²¹⁵ In the context of climate protection, this definition of a state objective is of particular importance in the interpretation of (fundamental) rights. The situation is similar with regard to Article 24 (1) GRC, which is to be interpreted in application of Article 37 GRC, since the latter, as a Union objective in the sense of the principle of sustainable development, is to ensure a high level of environmental protection and an improvement of the environment.²¹⁶

6.1 Material concerns regarding the main application

Primarily, the applicants request the deletion of the following wordings of the § 3 Abs 2 und 4 KSG 2011 gem Alt 1 B-VG-Kit1del1Tecte iVm BVG Nachhaltigkeit, Art 24 GRC iVm Art 37 GRC, gem Art 7 B-VG bzw Art 2 StGG tmd Art 4 B VG Kmderrechte:

²¹⁵ Cf. §§ 1 and 3 BVG Sustainability

²¹⁶ Cf. Art 37 GRC.

The Children's Rights Act came into force on 16.2.2011 and has constitutional status. Its main purpose is to implement the UN Convention on the Rights of the Child (CRC)²¹⁷, which was ratified by the Republic of Austria on August 6, 1992, subject to a reservation.²¹⁸ Like the UN Convention on the Rights of the Child, the BVG contains various (basic) rights, all of which relate to the sphere of life of children.²¹⁹ As Children" in the sense of the BVG Children's Rights are to be regarded as all natural persons who have not yet reached the age of 18 or who have not already reached the age of majority before that time on the basis of the legal system applicable to them in each case; therefore, in principle, all persons who have not reached the age of majority are covered.²²⁰ Since the applicants have neither reached the age of 18 nor are they otherwise legally considered to have reached the age of majority, the **BVG Children's Rights** is fully **applicable to them**.²²¹

Children are distinguished as a separate group within society as a whole, in particular because of their age and the fact that they pass through a number of different physical and psycho-cognitive developmental stages in the period from birth to adulthood. In the process, their personality as well as their (legal) capacity to act and thus their ability to participate in society gradually develops. Until this development is completed, it is therefore necessary to provide children with special protection appropriate to their age, since they form a **particularly vulnerable** group of the population simply because of their still very advanced age, a circumstance over which they themselves have no control. Children are therefore - especially within the legal system - **requires special protection**.²²²

The Federal Constitutional Law on Children's Rights was created against the background of this special need for protection of children and grants them different rights in the constitutional rank.

²¹⁷ Dbereinkommen iiber die Rechte des Kindes, BGBl 1993/7 idF BGBl 437/1993.

²¹⁸ Cf. Convention on the Rights of the Child, Federal Law Gazette 7/1993 as amended by Federal Law Gazette III 155)2022.

²¹⁹ See *Sax* in Heilll (ed.), *Handbuch Menschenrechte* (2009) 544; *Berka/Binder/Kneihs*, *Die Gnmrechte - Gnm- und Menschenrechte in 6sterreich²* (2019) 603; *Fuchs*, *Kinderrechte in der Verfassung: Das BVG uber die Rechte von Kindern*, in: Lienbacher/Wielinger (eds.), *Jahrbuch Offentliches Recht 2011* (2011) 104.

²²⁰ Cf. *Sax*: in Heilll (ed.), *Handbuch Menschenrechte* (2009) 544; *Berka/Binder/Kneihs*, *Die Gnmrechte - Grund- und Menschenrechte in 6sterreich²* (2019) 603; *Fuchs*, *Kinderrechte in der Verfassung: Das BVG uber die Rechte von Kindern*, in: Lienbacher/Wielinger (eds.), *Jahrbuch Offentliches Recht 2011* (2011) 104.

²²¹ Cf. volume of the applicants' proofs of citizenship (**Annex ./2**).

²²² Cf. *Grabenwarter*, *Zur Frage der Integration der Garantien der Kinderrechtekonvention in das osterreichische Btmesverfassungsrecht*, in: *Berka/Grabenwarter/K. Weber* (eds.), *Studien zur Kinderrechtskonvention und ihrer Umsetzung in Osterreich* (2014) 27 (60); *Fuchs*, *Kinderrechte in der Verfassung: Das BVG uber die Rechte von Kindern*, in: Lienbacher/Wielinger (eds.), *Jahrbuch Offentliches Recht 2011* (2011) 91 (102); see also *Handig/Ohmer*, *Gebietet Generationengerechtigkeit Klirnaschutz? On the Basic Social Right to the Preservation of*

the
Kindeswohls nach Art I BVG Kinderrechte, RdU 2022, 225 (225).

The core of these children's rights guaranteed by the constitution is the subjective right to the **protection of the best interests of the child** pursuant to Art 1 BVG Children's Rights, <whose individual aspects include the rights to **protection and care**, to the **best possible development** and to the **protection of the interests of children**, whereby the aspect of **intergenerational justice** must be given special consideration in the interpretation of the best interests of the child as a whole.²²³ As already mentioned, the right to safeguard the best interests of the child has effects that go far beyond purely objective duties of protection on the part of the state, such as those imposed by state objectives, and confers on children a **collective right** to the safeguarding or protection of the best interests of the child in all its various facets.²²⁴ A violation of the constitutional rights of the child arising from Art. 1 of the Federal Constitutional Law (BVG) is not permitted.

subjective rights guaranteed may therefore be invoked before the Constitutional Court.²²⁵)

These subjective-legal claims are to be observed both by the judiciary and the administration in the execution of laws and by the legislature in the exercise of its legislative power.²²⁶ The first sentence of Article 1 of the Federal Constitutional Law on Children's Rights in its entirety, but in particular <rough the explicit naming of the right to "*protection and care*", contains a decided claim to protection, which "*obliges the state to take positive action and to take measures if the child's well-being is endangered*".²²⁷ This claim for protection is further condensed into "*an obligation of the state to ensure the physical and mental well-being of the child and his or her best possible development and growth through concrete measures and protective measures*".²²⁸ The right to protection and care, which is guaranteed by Art. 1 of the Federal Constitutional Law on the Rights of the Child, thus gives children, as bearers of the rights of the child, a **claim to benefits** from the state, which is expressed, for example, in a right to social security, to adequate health care, or to access to (all) educational institutions.

²²³ Cf. Art 1 first sentence BVG Kinderrechte; see also Fuchs, Kinderrechte in der Verfassung: Das BVG über die Rechte von Kindern, in: Lienbacher/Wielinger (eds.), Jahrbuch Öffentliches Recht 2011 (2011) 91 (97 ff and 102 t).

²²⁴ Cf. VfGH 112.2018, G 308/2018; 9.10.2015, G 152/2015 and 11.12.2014, G 18/2014; see also Fuchs, Kinderrechte in der Verfassung: Das BVG über die Rechte von Kindern, in: Lienbacher/Wielinger (eds.), Jahrbuch Öffentliches Recht 2011 (2011) 91 (97 f).

²²⁵ Fuchs in Lienbacher/Wielinger (eds.), Jahrbuch öffentliches Recht 2011 (2011) 91 (97 t).

²²⁶ See esp. VfSlg 19.941/2014; 20.018/2015.

²²⁷ Cf. Grabenwarter, Zur Frage der Integration der Garantien der Kinderrechtskonvention in das österreichische Bundesverfassungsrecht, in: Berka/Grabenwarter/K. Weber (eds.), Studien zur Kinderrechtskonvention und ihrer Umsetzung in Österreich (2014) 59 (own emphasis).

²²⁸ Cf. Fuchs in Lienbacher/Wielinger (eds.), Jahrbuch öffentliches Recht 2011 (2011) 91 (103) (own Introduction).

can exclude.²²⁹ According to Art. 1 BVG Children's Rights, protective measures must in any case be suitable to provide actual protection and care and to create or ensure the framework conditions for the best possible development and evolution. The threat to the welfare of the child is therefore also covered by the protection sphere of Art. 1 BVG Children's Rights.

From this point of view, the rights according to Art. 1 B-VG Children's Rights occupy a **special position in terms of fundamental rights dogma**, since the duties to protect enshrined therein - in contrast to the rights standardized in the StGG or in the ECHR - are not based on the concept of duties to protect or to safeguard derived from rights of defense or freedom.

fulfilment,²³⁰ but as a **main duty** no longer. This creates a **genuine duty to protect** already **at the** stage of danger.²³¹ While a violation of derived duties of protection can only be asserted by fundamental rights holders in those cases,

in which "*protective measures are either not taken at all or the regulations and measures taken are obviously unsuitable or completely inadequate to achieve the required protection goal, or if they fall considerably short of the protection goal*",²³². In the context of the **genuine duty to protect** pursuant to Art. 1 BVG Children's Rights, **any failure by** the state to take effective protective measures that leads to a (foreseeable) impairment of the best interests of the child must be regarded as an interference requiring justification. **In the** absence of the fulfilment of the conditions for the protection of children under Article 7 of the BVG, this is to be regarded as a violation of the fundamental right.

In logical consequence, the claim for benefits of children against the state resulting from Art. 1 first sentence BVG Kinderrechte is the stronger, the more existence-threatening and imminent a concrete **need of the child's well-being** is to be classified. The greater the **risk of** the realization of an imminent danger to children, the more acute is also the **duty of the state to protect**.²³³ This is especially true since Article 1 of the BVG Child Rights stipulates in its core the "*obligation of the state [to] provide for the best interests of the child by means of concrete benefits and*

²²⁹ Cf. Grabenwarter in Berka/Grabenwarter/K. Weber (eds.) 60; Fuchs in Lienbacher/Wielinger (eds.), Jahrbuch öffentliches Recht 2011 (2011) 91 (102).

²³⁰ Hofer, Die staatliche Verantwortung für den Umwelt- und Klimaschutz (2021), 124 f.m.w.N.; cf. also Holoubek, Grundrechtsschutz vor neuen Herausforderungen, OJT (2022) 38 C see also in detail Holoubek, Grundrechtliche Gewährleistungspflichten (1997).

²³¹ Cf. Fuchs in Lienbacher/Wielinger (eds.), Jahrbuch öffentliches Recht 2011 (2011) 91 (97t).

²³² Cf. Holoubek, Fundamental Rights Protection Facing New Challenges, OJT (2022) 103; see also Berka, Constitutional Law⁸ (2021) Rz 1224

²³³ On risk and hazard mitigation, see Sinder, Anthropozanes Verfassungsrecht als Antwort auf den anthropogenen Klimawandel, JZ 2021, 1078 (1085 f.)

The state shall ensure the physical and mental well-being of the child and his or her best possible development and fulfillment by means of protective measures", whereby the protection of the child's well-being shall in any case be designed in a manner **appropriate to the generations**.²³⁴ If the realization of a dangerous situation is inevitable for the majority of children, the state's inability to take effective measures to **avert the danger** already constitutes an obvious **encroachment** on the constitutionally protected rights of children. **Failure to** take effective protective measures or defense against danger against better knowledge and/or against a clear scientific factual situation would also qualify as a **violation of** Article I of the Federal Constitutional Law on Children's Rights, if the preconditions of Article 7 of the Federal Constitutional Law on Children's Rights are not met.²³⁵

The concrete scope of the duty to protect pursuant to Article 1 of the Federal Constitutional Law on the Rights of the Child in connection with the climate crisis will be based on scientific findings as well as on the relevant provisions of EU and national law.²³⁶ Due to the scientifically proven, serious effects of the climate crisis on children, the state has an increased **obligation to protect** children from foreseeable damage or (foreseeable) impairment of their well-being in an appropriate manner.²³⁷ In particular, the aspect of **intergenerational justice** must be taken into account,²³⁸ which is to be understood as a specific formulation of the subjective rights of Art 1 B-VG Children's Rights. Especially since children are already affected psychologically and physically by the obvious consequences of the climate crisis.²³⁹

²³⁴ Cf. *Fuchs* in Lienbacher/Wielinger (eds.), *Jahrbuch öffentliches Recht* 2011 (2011) 91 (103).

²³⁵ Cf. Art I and 7 BVG Children's Rights.

²³⁶ VgL § 3 Abs I KSG 2011

²³⁷ Ygl UN Committee on the Rights of the Child 22.9.2021, CRC/C/88/D/104/2019, *Sacchi et al*, para 10.13; see also *Fuchs*, *Kindenechte in der Verfassung: Das BVG über die Rechte von Kindern*, in Lienbacher/Wielinger (eds), *Jahrbuch Öffentliches Recht* 2011 (2011) 91 (103).

²³⁸ Cf. Art I first sentence BVG Children's Rights.

²³⁹ Cf DtBVerfG 24.3.2021, 1 BvR 2656/18, para 117 ff and 186; *Daniel Hellden et al*, *Climate change and child health: a scoping review and an expanded conceptual framework*, *Lancet Planet Health* 2021/5, 164.

<[https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(20\)30274-6/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(20)30274-6/fulltext)> (Jan. 25, 2023); *Nick Watts*

et al, *The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate*, *Lancet* 2019/394, 1836 ff <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32596-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32596-6/fulltext)> (25.1.2023).

Wittstenhagen, *Shadow at the child's soul*, *TIME ONLINE* (9 5 2022)

<https://www.zeit.de/2022/19/klimawandel-kinder-belastung-psychologie-familie>> (Feb. 17, 2023); *Nowakowska*, *Climate Crisis Burdens Young people heavily - to to to depression*, *GEO* (27.1.2023)

<<https://www.geo.de/natur/nachhaltigkeit/depression-und-verzweiflung--so-stark-belastet-die-klimakrise-junge-people--33141568.html>> (17 2.2023); *Vienna Zeitung*, *Climate Change Harms Kindem* (1 4.1. 2019).

<<https://www.wienerzeitung.at/nachrichten/wissen/k:lima/2038144-Klimawandel-damages-children.htm>>

(17.2.2023).

Against the background of the **equality of nations** expressly emphasized in Article 1 of the Federal Constitutional Law on Children's Rights, it should also be noted that the delusion of the best interests of the child with its various aspects represents a **continuous state obligation which in most cases cannot be satisfied by "one-off measures"**. The protection of fundamental rights provided by Article 1 of the Federal Constitutional Law on Children's Rights is to be regarded as **"anticipatory preventive"** inasmuch as not only current, but **also future impairments** fall within the scope of protection under Article 1 of the Federal Constitutional Law on Children's Rights. Genuine duties to protect can therefore also be violated by a failure to preventively avert danger.²⁴⁰

hlsb in situations such as the present one, in which both the present and the future best interests of the child can be prevented or protected exclusively by actions in the present, there is an **ongoing obligation on the part of** the state to take all necessary measures to ensure that such a foreseeable impairment of the best interests of the child does not occur or does not occur with the scientifically predicted severity.²⁴¹ Accordingly, the duties of protection resulting from Art. 1 of the BVG only end when an existing or foreseeable danger to the child's well-being has been **finally and sustainably averted** or has been **reduced to the minimum possible extent**. If a dangerous situation for the child's well-being, which is already gradually materializing, continues or if the realization of serious negative effects is already foreseeable, the state must continuously counteract it with measures that are as effective as possible. The safeguarding or protection of the best interests of the child is thus a **running obligation** which can be fulfilled on the part of the state only by **taking effective and reasonable measures**. In addition, it should be noted that not only dangerous situations that have already occurred trigger the genuine duty of protection under Art. 1 BVG, but also that a child is already in danger.

probable potential threat" to the child's well-being must be sufficient to justify the
The duty to protect remains in force until the danger has been **finally eliminated** or, if this is not entirely possible, it has at least been **limited to a possible minimum**.

²⁴⁰ See *Holoubek*, Grundrechtsschutz vor neuen Herausforderungen, 21st OJI Voll/1 (2022) 155 ff and 158. ff.

²⁴¹ Cf. *Holoubek*, Gmndrechtsschutz vor neuen Herausforderungen, 21st OJI Vol. I/1 (2022) 155 ff and 158 ff.

²⁴² Cf. *Holoubek*, Gmndrechtsschutz vor neuen Herausforderungen, 21st OJI Vol. I/1 (2022) 105 f.

What is special about the damaging catastrophic event of **climate change** is that there is a time lag between the occurrence of harmful or life-threatening consequences and the adoption of governmental protective measures. The climate crisis is too complex a process for protective measures to be effective and to ensure the protection of children immediately at the time of their enactment. On the one hand, this means that the full extent of the violation of freedoms by the legal norms adopted will only become visible and apparent a few years later. On the other hand, it means that protective measures to avert these consequences are only timely and therefore effective if they are taken at the earliest possible moment. What is not clear is <lass protective measures taken at the present time must be effective: There is no longer any doubt <lass

By immediate and drastic measures, negative and life-threatening consequences of the climate crisis can bzv in any case be reduced to a limited extent.²⁴³ Since the catastrophic consequences of the climate crisis as well as the restrictions on liberty associated with the need to take ever more drastic TIIG reduction measures will almost certainly materialize in the (near) future, the state already has an active and ongoing obligation to take effective climate protection measures to protect children from impairment of their well-being.

It should be pointed out once again that, even according to the dogmatics of the duty to protect developed in connection with the rights of defense granted by constitutional law, a constitutional violation of the duty to protect must be assumed if *"the regulations and measures taken are obviously unsuitable or completely inadequate to achieve the required protection goal, or if they fall considerably short of the protection goal"*.²⁴⁴ IdZ is to be emphasized the fact, class the KSG 2011 since <lessen entry into force to no substantial IBG-Reduktionen led and thus also dac; own goal, namely the „Umsetzung -,11irksamer AfajJnahmen zum Klimaschutz ermöglichen"²⁴⁵ offenk.7.mdig failed.²⁴⁶ Against this backdrop, the KSG 2011 would in itself - and

²⁴³ Cf. IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability- \Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2022), Summary for Policymakers, 5 ff; IPCC, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021), 17 ff.

²⁴⁴ *Holoubek*, Gmndrechtsschutz vor neuen Herausfordernngen, OJI (2022) 103 with reference to the Climate decision of the dt Federal Constitutional Court Dt BVerfG 24.3.2021, 1 BvR 2656/18.

²⁴⁵ § 1 KSG 2011.

²⁴⁶ See clazu *Umwelthundesamt*, Austria's National Inventory Report 2022, REP-081 (2022) 53 ff; *Umwelthundesamt*, Klimaschutzbericht 2022, REP-0816 (2021) 76 ff; *Steininger et al*, +1,5°C Wieviel Treibhausgase dürfen wir noch emittieren? - Background paper on global.en and national greenhouse gas budgets<,,

in particular <lessen contested parts even according to the defensive duty dogmatics as "obviously unsuitable or completely inadmissible [...] to achieve the required protection goal" or as "significantly lag[d] behind the protection goal".²⁴⁷ This must apply all the more to the sufficient duty to protect pursuant to Art 1 BVG Children's Rights, which is <limited by the ineffectiveness of the KSG 2011 and in particular the contested parts of the § Section 3 (2) KSG 2011 is already currently violated.

The genuine duty of the state to protect children, which is anchored in constitutional law by Ali 1 BVG KindetTechte, is supported by the state objective provisions of **§ 1 as well as of the § 3 Abs 1 und 2 BVG Nachhaltigkeit** gestarkt und im Hinblick auf den Erhalt der Umwelt and the protection of the climate as the basis of life.²⁴⁸ These provisions contain the clear **state goal** of comprehensive sustainability, whether in the use of natural resources or in ensuring environmental protection in general.²⁴⁹ **Sustainability** can mean nothing else than that the use of resources and the protection of the environment is to be designed in such a way that **future generations** will have at least the same intact environment and natural resources in such quantity and quality as are currently available to living persons.²⁵⁰ The term "**natural resource**" according to § 1 BVG sustainability, which isd Nachhaltigkeitsprinzip generationengerecht to use bzw **GHG emissions (CO2eq)** are also to be qualified.²⁵¹ The objectives of §§ 1 and 3 of the Federal Constitutional Law (BVG) on sustainability concretize the implementation of the duties to protect pursuant to Art. 1 of the Federal Constitutional Law on Children's Rights, which, according to their explicit wording, are also to be fulfilled under consideration of **intergenerational justice**.²⁵²

In this regard, it should be noted that the constitutional legislator mit § 3 BVG sustainability has unmistakably expressed, class em

CCCA (2022) 12 ff and 18
 <https://www.ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Papiere/THG-Budget_Background_Paper_CCCA.pdf> (12/14/2022).

²⁴⁷ Cf. *Holoubek*, Grundrechtsschutz vor neuen Herausforderungen, OJT (2022) 103.

²⁴⁸ Cf. §§ 1 and 3 BVG Sustainability.

²⁴⁹ Cf. §§ 1 and 3 BVG Sustainability.

²⁵⁰ Cf. A2316/XXXIV GP3;

²⁵¹ See, for example, *Steininger et al*, +1.5°C: How much more greenhouse gases can we emit? - Background paper zu global and national Greenhouse gas budgets, CCCA (2022) 12 ff <https://www.ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Papiere/THG-Budget_Background_paper_CCCA.pdf> (Dec. 30, 2022); see on the remaining global GHG budget esp. *JPCC*, Special Report: Global Warming of 1.5°C - Summary for Policymakers (2018) 12 cit.

²⁵² Siehe Art 1 first sentence BVG Children's rights.

The Federal Constitutional Court has to take into account that there is a constitutionally established **public interest** in the preservation of these state goals.²⁵³ The state objectives mentioned in §§ 1 and 3 of the Federal Constitutional Law concretize the public interest which the legislator is obliged to safeguard in accordance with Art 2 of the Austrian Constitution and Art 7 of the Federal Constitution, even if there is no absolute priority of environmental interests over other decision-making delinants.²⁵⁴ In this context, it should be pointed out that the German Federal Constitutional Court recently stated with regard to the German state objective provision of Article 20a of the German Basic Law ("GG") - which is not indistinguishable from Articles 1 and 3 of the Federal Constitutional Law - that, with a view to safeguarding the civil rights of future generations affected, it is em **constitutional mandate** to achieve climate neutrality and that this is even a justiciable legal term.²⁵⁵

According to the latest calculations of the CCCA²⁵⁶, the Republic of Austria still has a total **THC budget of around 280 MtCO₂eq** available in order to achieve the goal of a maximum increase in the global average temperature of 1.5°C compared with the pre-industrial era, with a probability of around **66%**.²⁵⁷ This maximum amount is calculated on the basis of a per-capita approach from the global budget for the

²⁵⁸The GHG resource must be strictly limited because exceeding the GHG budget and the resulting negation of compliance with the 1.5°C target would be tantamount to the **destruction of a large part of the applicants' livelihoods**.²⁶⁰ Thus, on the basis of the remaining GHG budget, GHG emissions are to be regarded as an extremely **limited resource** that is to be used in an intergenerationally just manner within the meaning of § 1 BVG Sustainability. A use of the TI-IG resource that does not take place in a generationally just manner would be

²⁵³ Cf VfGH 29.06.2017, E 875/2017-32, E 886/2017- 31, para 205 mwN.

²⁵⁴ Cf VfGH 29.06.2017, E 875/2017-32, E 886/2017- 31, para 205 mwN.

²⁵⁵ CfDtBVerfG 24.3.2021, 1 BvR 2656/18 Lia.

²⁵⁶ Climate Change Centre Austria (CCCA).

²⁵⁷ Cf. *Steininger et al*, +1,5°C: How much more greenhouse gases can we emit? - Background paper on global and national greenhouse gas budgets, CCCA (2022) 12 ff
<https://www.ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Papiere/THG-Budget_Background_Paper_CCCA.pdf> (12/30/2022).

²⁵⁸ Cf. Art 2 para 1 lit a Paris Convention on Climate Change.

²⁵⁹ Cf. *Steininger et al*, +1.5°C How Much Greenhouse Gases May We Still Emit? - Background paper ZLI global w,d national Greenhouse gas budgets, CCCA (2022) 12 ff
<https://wv.rw.ccca.ac.at/fileadmin/00_DokumenteHauptmenue/02_Klimawissen/Papiere/THG-budget_background_paper_CCCApdf> (12/30/2022).

²⁶⁰ Siebe clazu insb IPCC, Special Report Global Warming of 1.5°C - Summary for Policymakers (2018) 7 ff.

would therefore mean a serious violation of the genuine state duty to protect pursuant to Art. 1 of the Federal Constitutional Law on Children's Rights in conjunction with § 1 of the Federal Constitutional Law on Sustainability.

Against this background, two things follow from the genuine protective duty of Art 1 BVG Children's Rights:

- On the one hand, there is an **ongoing obligation to** <las child's welfare before impairments <l>by the climate crisis and i.h.ren consequences, whereby this obligation only ends when the associated dangers have been finally eliminated or limited to the minimum achievable as far as possible. As long as the dangerous situation affecting the well-being of the child continues to exist, the state has, on the basis of its obligation under Article 1 of the Federal Constitutional Law, to protect children's rights, taking into account §§ 1 and 3 of the Federal Constitutional Law, Sustainability.
-effective measures to counteract this.
- On the other hand, measures taken to protect the well-being of children or to avert danger from them must also be suitable for contributing effectively to the achievement of this objective. In other words, protective measures must be taken that are as **effective as possible** and that do not counteract other measures to prevent or combat danger or even have the effect of aggravating a dangerous situation.

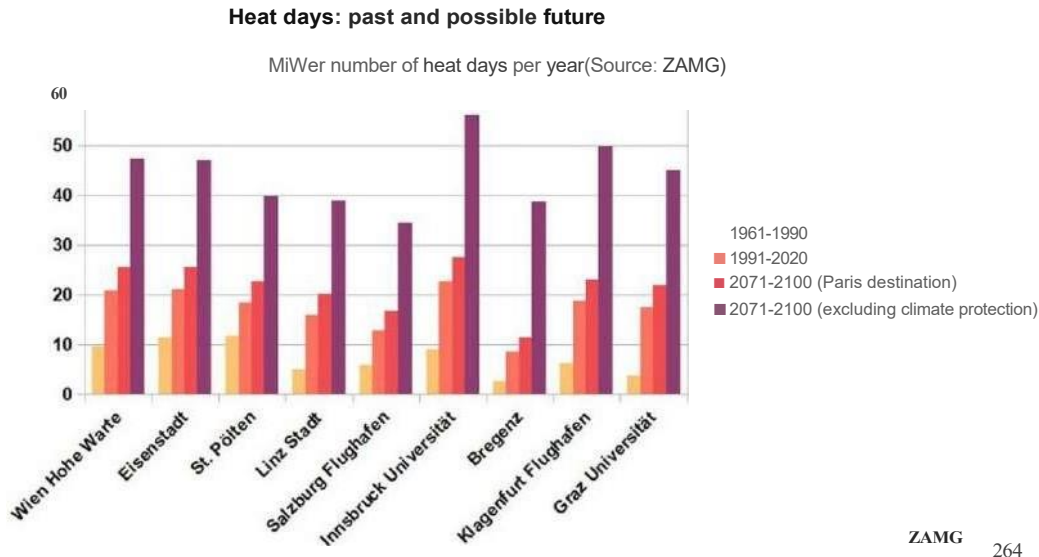
For the well-being of applicants, there are currently few threats that must be considered greater and more acute than the climate crisis.²⁶¹ Children are affected by the impacts of the climate crisis in a very special way and many times more severely than other groups of people because, on the one hand, they are more sensitive to and affected by climate:ri.sen-related environmental impacts and, on the other hand, there is a great likelihood that they will sense and be affected by the consequences of the climate crisis throughout the rest of their lives still ahead of them.²⁶²

For example, the consequences that can already be tolerated by children in 2023 include regular and m.l.l.ler shorter intervals of **extreme weather events** such as storms, heavy rainfall events and related flooding, extended heat waves, and periods of drought, which have a particularly negative impact on the **health of** vulnerable children.

²⁶¹ Cf. UN Committee on the Rights of the Child 22.9.2021, CRC/C/88/J/104/2019, *Sacchi et al*, Rn 10.13; *JPCC*, Special Report: Global Warming of 1.5°C - Summary for Policymakers (2018) 7 ff; see also *Inter-American Court a/Human Right*, Advisory Opinion on the Environment and Human Rights of November 15, 2017, OC-23/17, 31

(fn 121)²⁶² Cf UN Knderrechtskomitee 22.9.2021, CRC/C/88/D/104/2019, *Sacchi et al*, Rn10.13.

groups of people (especially children). Not to mention the impact on the **mental health of children**, who may be particularly affected by **climate anxiety**.²⁶³ An example of this is the development of heat days in Austria since 1961:



The constitutional duty to protect the applicants thus includes the right **to protection from the consequences of the climate crisis as well as to protection from severe (freedom) restrictions affecting their well-being in the context of drastic GHG reduction measures that will become necessary in the future**.²⁶⁵ In order to comply with these protection obligations, the remaining GHG budget must be used in a manner that is consistent with intergenerational justice, and its consumption must therefore be

- while at the same time reducing consumption - be distributed fairly among the different generations.

²⁶³ Cf. UN Committee on the Rights of the Child 22.9.2021, CRC/C/88/D/104/2019, *Sacchi et al*, para 10.13; see also.

Wastenhagen, Shadow on the child's soul, TIME ONLINE (9.5.2022) [:https://www.zeitde/2022\(19\)climate-change-children-belastung-psychology-family/](https://www.zeitde/2022(19)climate-change-children-belastung-psychology-family/) (17.2.2023); *Nowakowska*, Climate crisis strains Young people strongly - to to to depression, GEO (27.1.2023)

<https://www.geo.de/natur/nachhaltigk:eitJdepression-und-verzweiflung--so-stark-belastet-die-klimakrise-junge-people--33141568.html> (17.2.2023)

²⁶⁴ ZAMG, Heat Days Past and possible Future (2022) <https://www.zamg.ac.at/cms/de/klima/news/massive-ztmahme-an-hitzetagen/> (2/20/2023).

²⁶⁵ Cf. *Steininger et al*, +1.5°C: How much more greenhouse gases are we allowed to emit? - Background paper on global and national greenhouse gas budgets, CCCA (2022) 12 ff https://www.ccca.ac.at/fileadmin/OO_Dokumente/Hauptmenue/02_KlimawissenJPapier/T_H_G_budget_background_paper_CCCA.pdf

(1/16/2023).

This obligation is - as explained in the following under point 6.1.1.c - not fulfilled or rendered impossible by the parts of § 3 para. 2 KSG 2011 which are subject of the application.

§§ Sections 1 and 3 of the BVG are to be interpreted in a sustainable manner.

b) Go to Violation of the Rec/rte of the applicants pursuant to Art 24 (1) GRC, in particular with regard to Art 37 GRC

Article 24 (1) GRC guarantees - in a manner comparable to Article 1 BVG children's rights - the right of children to such protection and care as is necessary for the child's well-being. The majority of the literature and doctrine is to be followed to the effect that Article 24 (1) first sentence GRC provides children with a **subjective right to** protection and care, whereby "well-being" in the sense of the **best interests of** the child forms the central point of reference and (priority) basis.²⁶⁶ The case law of the Constitutional Court regarding the recognition of rights under the GRC is also to be understood in the sense that Art. 24 GRC is about the best interests of the child.

These are subjektiv-rechtliche Gmndrechte, which can be enforced in the Union-legal scope also before the VfGH.²⁶⁷

This subjective legal claim manifests itself in particular in the duty of the MS,

The state has a duty to take defensive measures when the welfare of children is at risk of being impaired or has already been impaired,¹⁶⁸ even if this necessitates the restriction of other rights of the child.¹⁶⁹ This is also accompanied by the state's duty to create an **effective regulatory system** to ensure the protection and care of children.²⁷⁰

²⁶⁶ Cf. *Schmahl*, Gleichheitsgarantien, in Grabenwarter (ed.), Enzyklopadie Europarecht II - Europaischer Grundrechtsschutz2 (2022) para 104; *Fuchs*, in Holoubek/Lienbacher (ed.), GRC-Kommentar² Art 24 (2019) para 27; *Holscheidt*, in Meyer/Holscheidt(eds), Charter of Fundamental Rights of the European Union⁵ (2019), Art 24 GRC Rz 20; *Frenz*, Handbuch Europarecht IV - Europaische Grundrechte (2009) Rz 3432 f; *Kingreen*, in Calliess/Ruffert (eds), EUV/AEUV Kommentar" (2022), Art 24 GRC Rz 3; *Ross*, in Schwarze/Beckerffiatje/Schoo (eds), EU-Kommentar4 (2019), Art 24 GRC Rz 1 and 5 f; *Streinz*, in Streinz (eds), EUV/AEUV - Treaty on European Union and Treaty on the Functioning of the European Union³ (2018), Art 24 GRC Rz 5.

²⁶⁷ Cf. VfSlg 19.632/2012. *Fuchs* in Holoubek/Lienbacher (eds.), GRC-Kommentar² Art 24 Rz 17 mwN (as of 1.4.2019).

²⁶⁸ Cf. *Schmahl*, Gleichheitsgarantien, in Grabenwarter (ed.), Enzyklopadie Europarecht II - Europaischer Grundrechtsschutz2(2022) para 104.

²⁶⁹ Cf. inter alia ECJ 12.6.2003, C-112/00, *Schmidberger*, Sig 2003,1-5659; ECJ 14.02.2008, C 244/06, ECR 2008, 1-00505.

²⁷⁰ Cf. *Holscheidt*, in Meyer/Holscheidt (eds.), Charter of Fundamental Rights of the European Union; (2019), Art 24 GRZRz 21, *Schmahl*, Gleichheitsgarantien, in Grabenwarter (eds.), Enzyklopadie Europarecht II -Europaischer Grundrechtsschutz2 (2022) Rz 104; see furthermore *Kingreen*, in Calliess/Ruffert (eds.), EUV/AEUV Kommentar⁶

Accordingly, Art 24 (1) GRC results - in a manner related to Art 1 BVG children's rights - in a **state duty of protection**, which is mirrored by a **subjective right of** children to be protected by **active measures of** the state as far as possible from foreseeable or already materializing dangerous situations, which are likely to impair their well-being. be protected.²⁷¹ Article 24 (1) first sentence GRC thus also consists in its core in a **genuine duty to protect**, which again establishes **subjective-legal claims for protection of** children against the state in all its manifestations. According to the **case law of the Constitutional Court**, the rights of the GRC can be asserted before the Court of Justice as rights guaranteed by constitutional law and thus constitute a **principle standard** in the proceedings for general nuncipation pursuant to Article 139 and Article 140 of the Federal Constitution.²⁷²

In this specific case, the applicants can rely on their rights under Art 24 CFR, since under Art 51 CFR the scope of application of the CFR is open in the present case. According to Art. 51 CFR, the scope of application of *the* CFR is limited to those situations which concern *the* "implementation of Union law".²⁷³ According to recent case law of the ECJ, the applicability of the CFR depends in particular on whether the regulation in question is aimed at the implementation of Union law, what character the regulation has and whether it pursues other objectives than those covered by Union law.²⁷⁴ In the opposite case, both the wording of § 2 first sentence, § 3 para 1 first sentence, para 2 seventh sentence, § 7 first sentence KSG 2011 as well as the legislative material pertaining to the KSG 2011 explicitly state that the KSG 2011 aims at the **coordinated implementation of Austria's GHG reduction commitments under international and national law** by enabling effective climate protection measures.²⁷⁵ Since the requirements of EU law for the Member States generally directly relate to the implementation of the EU's obligations under international law to combat the climate crisis, Austria's obligations under international and EU law coincide.

(2022), Art 24 GRC Rz 3; *Ross*, in Schwarze/Becker/Hatje/Schoo (eds), EU-Kommentar4 (2019), Art 24 GRC Rz5 et seq.

²⁷¹ Cf. *Holscheidt*, in Meyer/Holscheidt(ed.), Charter of Fundamental Rights of the European Union (2019), Art 24 GRC Rz 20 f.

²⁷² Cf. VfSlg 19.632/2012.

²⁷³ Cf. Art 51 (1) GRC.

²⁷⁴ Cf. ECJ 6. 3. 2014, Rs C-206/13, *Siragusa*, para 25; see also ECJ 10. 7. 2014, Rs C-198/13, *Hernandez*, para 37; 7. 9. 2017, Rs C-117/17, *Demarchi Gino*, para 20.

²⁷⁵ Cf. § 2 first sentence, § 3 (1) first sentence, § 3 (2) seventh sentence and § 7 first sentence KSG 2011; EBRV

Result prim ir serves the coordinated implementation of - binding and directly applicable - Union law.²⁷⁶

The duty to protect the public welfare according to Art 24 (1) GRC is strengthened and concretized by Art 37 GRC. According to Art 37 GRC, a "*high level of environmental protection and the improvement of the quality of the environment*" must be included in legislation and "*must be ensured in accordance with the principle of sustainable development*".²⁷⁷ Art 37 GRC is to be regarded as a central concern of the European Union and probably as a principle within the meaning of Art 52 (5) GRC.²⁷⁸ On the **basis of the principle of sustainability** pursuant to Art 37 GRC, there is therefore also an obligation in areas of law determined by Union law to pay particular attention to the generation-friendly use of natural resources and to take this into account as an overriding public interest in decision-making.

The requirements of Art 37 GRC can also be found systematically in several parallels

Vorschriften of the other Principles of Law, again, namely for example in Art 191 (2) and (3) TFEU²⁷⁹ the Precautionary Principle, the

Polluter Pays Principle, as well as in Art 114 para 3 TEU, Art 11 TFEU and Art 3 para 3 TEU²⁸⁰, as well as in para 9 of the preamble to the TEU and in Art 3 para 5 TEU. Art 37 GRC therefore contains a **binding mandate** for a "future-oriented environmental policy" in the European Union.²⁸¹ Art 37 GRC contains not only the obligation of the state to ensure a high level of environmental protection and to improve the quality of the environment, but also the climate-relevant mandate to operate in a sustainable and resource-conserving manner.²⁸² The objective of Art 37 GRC must always be observed and means that environmental concerns must be taken into account in the respective political projects.²⁸³ According to the opinion of the ECJ, it is also not excluded that the ECJ

²⁷⁶ See in particular Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on setting binding national annual greenhouse gas emission reduction targets for the period from 2021 to 2030 as a contribution to climate change mitigation action to meet the commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, AB! L 156/2018, 26 (hereinafter referred to as EU Burden Sharing Regulation), which directly serves the implementation of the obligations under the Paris Climate Agreement, Federal Law Gazette III 197/2016, as amended by Federal Law Gazette II 151/2022.

^m Cf. Art 37 GRC.

²⁷⁸ *Vgl. Madner* in Holoubek/Lienbacher (eds), GRC-Kommentar Art 37 Rz 14 ff (as of 1.4.2019).

²⁷⁹ Treaty on the Functioning of the European Union, OJ C 2012/326, 47 (hereinafter TFEU).

²⁸⁰ Treaty on European Union, AB! 2012/326, 13 (hereinafter: TEU).

²⁸¹ Cf. *Bungenberg*, Soziale Rechte, in Grabenwarter (ed.), Enzyklopadie Europarecht II - Europaischer Grundrechtsschutz² (2022) Art 37 Rz 116 mwN.

²⁸² Vgl. *Viadner* in Holoubek/A.ienbacher (ed.), GRC-Kommentar Art 37 Rz 22 mwN (as of 1.4.2019).

²⁸³ Cf. *Bungenberg*, Soziale Rechte, in Grabenwarter (ed.), Enzyklopadie Europarecht II - Europaischer Grundrechtesschutz² (2022) Art 37 Rz 113.

Art. 37 GRC grants a strong individual protection.²⁸⁴ Art 37 GRC idS untemrnuates the european approach to subjectivize infringement issues.

Art 24 (1) GRC must therefore also be interpreted in the light of Art 37 GRC, which gives additional weight to the aspect of **generational justice** in connection with the subjective-legal **duty to protect** the particularly vulnerable group of children. As already explained above with regard to § 1 BVG Sustainability, the remaining **GHG budget of Austria** (280 MtCO₂eq) represents an extremely limited resource, the consumption of which is to be distributed among the different generations in an equitable manner and in a manner that does not violate fundamental rights, also in the light of Article 11 37 GRC. The scope of protection of Art 24 (1) GRC thus also includes the **protection of the best interests of the child by the consequences of the climate crisis**, which is violated in particular if the timely adoption of effective climate protection measures by the state is or was omitted.

While the concept of generation-appropriate GHG management has not yet found expression in the rulings of the Austrian supreme courts, the German Federal Constitutional Court (BVerfG) recently had to deal with this issue in detail.²⁸⁵ In its decision of March 24, 2021, the BVerfG stated that *"no generation may be allowed to consume large parts of the CO₂ budget under comparatively high reduction burdens if, at the same time, the following generations are denied a*

*- The German Federal Constitutional Court (BVerfG) has judged that the intertemporal granting of burdens would be a priory of interventions in liberties that would become necessary in the future.*²⁸⁶ Although the German BVerfG judged the **intertemporal burden allocation** in the context of the prioritization of interventions in liberty rights that will become necessary in the future, a comparable understanding under the aspect of intergenerational justice is also to be taken as a basis for the **duties to protect** pursuant to Art 1 BVG Children's Rights and Art 24 (1) GRC as well as the goal of generation-appropriate resource conservation within the meaning of § 1 BVG Sustainability and Art 37 GRC.²⁸⁷

²⁸⁴ Cf. Madner in Holoubek/Lienbacher (eds.), GRC-Kommentar 2 Art 37 Rz 10 (as of 1.4.2019); Reference is made here to the Schlusssantrag vom 8.1.2004 zu EuGH 10.6.2004, Rs C-87/02, *Kommission/J.talien*, Rz 36; Schlusssantrag vom 26.5.2005 zu EuGH 13.9.2005, Rs C-176/03, *Kommission/Rat*, Rz 57ff.

²⁸⁵ See Dt BVerfG 24.3.2021, 1 BvR 2656/18.

²⁸⁶ Cf. Dt BVerfG 24.3.2021, 1 BvR 2656/18, para 192 (own emphasis).

²⁸⁷ Cf. on the necessity of a broader approach to intertemporal burden sharing with reference to the BVG Kinderrechte *Holoubek*, Grundrechtsschutz vor neuen Herausforderungen, 21st Δ IT Vol. I/1 (2022) 132 f; see in general on intergenerational justice taking into account the climate decision of the German Federal Constitutional Court. BVerfG *Handig/Ohmer*, Gebietet Generationengerechtigkeit Klimaschutz? Zum soziale

Grundrecht auf Wahrung des Kindeswohls nach Art 1 BVG Kinderrechte, RdU 2022, 225 (230).

c) ***On the concrete unconstitutionality do prüfungsgegenständlichen word sequences of the***

§ 3 Para 2 KSG 2011

As will be discussed below, the subject matter consequences of the proposal do not include (i) a time-limited commitment period²⁸⁸, (ii) a pure negotiating obligation regarding the development of effective GHG reduction measures, and (iii) exclusively retrospectively oriented emergency measures.²⁸⁹ As will be shown in the following, the

§ Section 3 (2) KSG 2011, **in** its current version, from these three grounds, the state's obligations to protect the applicants, which are guaranteed by constitutional law pursuant to Article 1 of the Federal Constitutional Act on Children's Rights and Article 24 of the European Convention on Civil and Political Rights.

Ad (i): § 3 para 2 KSG 2011 regulates the obligation of federal ministers to negotiate the development of GHG reduction measures. The 111

§ The duty to negotiate standardized in Section 3 (2) sixth sentence of the KSG 2011 is based on the following

the past, limited commitment period:

*Just as negotiations are to be concluded within nine months before the beginning of a **verpflichtung** period, which is March 31, 2012, **for the 2013 to 2020 verpflichtung period.**"²⁹⁰*

The law does not provide for an extension of the commitment period or the creation of new commitment periods for the period after 2020.²⁹¹ The **exclusive reference to a past commitment period** prevents new negotiations on the development of effective climate protection measures from taking place. It follows from this that the genuine duty of protection which exists in relation to the applicants on an ongoing basis and is guaranteed by constitutional law and which, in accordance with the above statements, consists in the earliest possible adoption of effective climate protection measures by the State, is no longer being or can no longer be fulfilled de lege lata at the latest since the end of the year 2020. The duty to protect is therefore violated.

From the wording and the systematics of the KSG 2011 - and in particular of the

§ Section 3 (2) KSG 2011 - results in the fact that the several times in Section 3 (2) KSG 2011 mentioned

²⁸⁸ Instead of a continuous reduction obligation

²⁸⁹ Instead of the scientifically proven need for action.

²⁹⁰ Cf. § 3 para. KSG 2011 (emphasis by the applicants)

²⁹¹ Cf. Aul 1 and 2 KSG 2013 (own emphasis).

This is also evident from the fact that Annexes 1 and 2 of the Climate Protection Act 2011 only set maximum limits up to this point in time, namely up to and including 2020.²⁹² After this date, there is no implementation obligation and no GHG reduction path coordinating the climate protection measures.

Without the specification of a stringent GHG reduction path, however, it is impossible to fulfill the obligations in this area that are incumbent on the people and the w,ions, since only through the creation of such a basis for orientation can *"the indispensable development and flam.mg of appropriate techniques and practices"* be initiated and demanded to the extent necessary for the achievement of the Paris climate goals.²⁹³ Only in this way can *"a planning horizon emerge before which there is incentive and pressure to set in motion the necessary, sometimes protracted, developments on a large scale"*.²⁹⁴ The reference to time periods that lie exclusively in the past thus thwarts the definition of a will-necessary GHG reduction path, which is tantamount to a **qualified failure to** take effective climate protection measures. Therefore, the parts of § 3 para 2 KSG 2011 challenged on this basis fundamentally violate the legislator's **ongoing duty to act in** terms of **actively taking effective measures** to safeguard the best interests of the child within the meaning of Art 1 BVG Kinderrechte (Federal Children's Rights Act), according to which effective protective measures must be taken on a continuous basis until the threat to the best interests of the child has been finally and sustainably averted or reduced to <the possible minimum.²⁹⁵

Since § 3 para 2 KSG 2011 in its current version thus prevents the adoption of effective GHG reduction measures by referring to an already completed period of time, it violates the genuine duty to protect of Art 1 of the Federal Constitutional Law on the Rights of the Child and Art 24 para 1 of the European Convention on Human Rights and violates the constitutionally guaranteed right of the applicants to the protection of the best interests of the child.

Ad(ii): The reference to a past commitment period is furthermore structurally wld linguistically venvoben with a **pure negotiating pliclft of** the Federal Minister:in. The

²⁹² Cf Anl 1 and 2 KSG 2011.

²⁹³ Cf Dt BVerfG 24.3.2021, 1 BvR 2656/18, para 252.

²⁹⁴ Cf. DtBVerfG 24.3.2021, 1 BvR 2656/18, para. 253.

²⁹⁵ Sieve clazu already above under Ptmkt 6.1.1.a.

The actual implementation of coordinated and sustainable GHG-reducing Jv1af3nalunen, however, is not regulated by § 3 para 2 KSG 2011 in its current form.

§ Section 3 (2) of the KSG 2011 stipulates in this respect that "*negotiations shall take place for the development of measures for compliance with the maximum quantities in the respective sectors*" and that "special possibilities for measures shall be taken into account in these negotiations".²⁹⁶ The **mere obligation to negotiate**, however, has been shown to result in unqualified measures being published in non-binding catalogs, but without any quantification of their GHG reduction effect, nor any assessment of whether the individual measures cancel each other out.²⁹⁷ Nor is a maBnal implementation evaluated. n the last KSG table of measures published by the current BMK for 2019 and 2020, a total of **151 individual measures** were published on this basis, which are supposed to contribute to the reduction of GHG emissions, but for **16 of** the individual measures listed therein, a numerically determined **GHG reduction potential** was actually indicated; the remaining measures listed, however, were merely marked as "n.a.". (not specified).²⁹⁸ In the measure profiles for the commitment periods from 2008 to 2012 and 2013 to

In 2018, the measures listed therein were not evaluated a priori for their respective GHG savings potential or their ability to potentially counteract each other.²⁹⁹

²⁹⁶ Cf. § 3 para 2 first and second sentence KSG 2011.

²⁹⁷ Cf. *B/vfK*, Maßnahmentabelle des Btmdes und der Lander gema/3 § 3 Abs. 2 vorletzter Satz KSG für die Jahre 2019 and 2020 <https://www.bmk.gv.at/dam/jcr_4851eabd-a9c7-46e2-b855-928fb75fb5b9/KSG_Massnahmentabelle2019_2020.pdf> (2.1.2023); *BMLFUW* (now BMK), 1vfafnahm enprogramm 2013/201 4 des Bundes uncl der Lander als Beitrag zur Erreichung des nationalen Klim aziels2013-2020.

<https://www.bmk.gv.at/themenklima_umwelt/klimaschutz/nat_klimapolitik/klimaschutzgesetz.html> (Feb. 15, 2023); *BMLFUW* (now BMK), Maßnahmeprogramm des Bundes und der Lander nach Klimaschutzgesetz zur Erreichung des Treibhausgasziels bis 2020- Zweite Umsetzungsstufe für die Jahre 2015 bis 2018

<https://www.bmk.gv.at/themenklima_umwelt/klimaschutz/nat_klimapolitik/klimaschutzgesetz.html> (Feb. 15, 2023).

²⁹⁸ Cf. *B/vfK*, Maßnahmentabelle des Bnndes und der Lander gemiill § 3 Abs. 2 vorletzter Satz KSG für die Jahre 2019 and 2020 <https://www.brnk.gv.at/dam/jcr4851eabd-a9c7-46e2-b855-928fb75fb5b9/KSG_Massnahmentabelle2019_2020.pdf> (2.1.2023).

²⁹⁹ Cf. *BAILFUW* (now B:tv.IK), Maßnahmenprogramm 2013/2014 desBundes und der Lander als Beitrag zur Erreichung of the national climate target 2013-2020 <https://www.bmk.gv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik/klimaschutzgesetz.html> (Feb. 15.2023); *BMLFUW* (now BMK), Program of Measures by the Federal Government and the Länder under the Climate Protection Act to Achieve the Greenhouse Gas Target by 2020 - Second Implementation Stage for the Years 2015 to 2018 <https://www.bmk.gv.at/themenklima'-utnweltlkbaschutz!nat_klimapolitik1klimaschutzgesetz.html> (Feb. 15, 2023).

By deleting the mere obligation to conduct negotiations in § 3 para 2 KSG 2011, the BMK is enabled to ensure the best interests of the child pursuant to Art 1 BVG Kinderrechte iVm §§ 1 and 3 of the Federal Constitutional Court Sustainability Act and Art 24 (1) GRC in conjunction with Art 37 GRC. Since the reference to already expired commitment periods is directly linked to the pure obligation to negotiate (instead of an active mandate to act) in the sixth sentence of Section 3 (2) of the Sustainability Act 2011, this sentence should be repealed in its entirety in the view of the applicants.

Ad (iii): Also the focus on the **evaluation of already set**

Measures relating to the taking of further (emergency) measures in

§ Section 3 (2) seventh sentence of the KSG 2011 is unconstitutional, as it only allows the BMK to **act retrospectively**.³⁰⁰ On this basis, **measures aimed at the future** are not possible if the TIIG maximum values are exceeded or if the TIIG reduction effect of the measures taken is foreseeably too low. Since the constitutionally guaranteed duty of the state to protect according to Art 1 of the Federal Constitutional Law on Children's Rights in conjunction with §§ 1 and 3 of the Federal Constitutional Law on Sustainability or Art 24 (1) GRC in conjunction with Art 37 GRC requires a comprehensive GHG reduction also for the **anticipatory-privilege protection** of the well-being of the child and every gram of emitted TI-IG is irreversibly released into the atmosphere, further driving the escalation of the climate crisis, it is imperative that the KSG 2011 allows for preventive climate and thus child protection measures to be taken. Therefore, a mere evaluation obligation directed to the past paired with a mere obligation to negotiate future measures violates the genuine duty to protect according to Art 1 of the Federal Constitutional Law on the Rights of the Child and Art 24 (1) of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Furthermore, the wording "*further*" in Section 3 (2) seventh sentence of the Children's Rights Act 2011 should be deleted, as it refers to the general duty to negotiate, which is unconstitutional in the view of the applicants. Only the obligation to negotiate immediately in order to take emergency measures, which is directed at the introduction of additional GHG reduction measures, can be regarded as corresponding to the genuine duty of the state to protect and therefore as constitutional.³⁰¹

Since the rule of separate recording of the results of negotiations in

§ Section 3 (3) of the KSG 2011 as well as the obligation to report on the outcome of the negotiations.

³⁰⁰ Cf. § 3 para. 2 seventh sentence KSG 2011.

³⁰¹ Cf. § 3 para. 2 seventh sentence KSG 2011.

According to the petitioners, the fact that the unconstitutional parts of section 3(2) of the KSG 2011 can continue to refer to the negotiations on emergency measures in section 3(4) of the KSG 2011 after the requested repeal of the unconstitutional parts of section 3(2) of the KSG 2011, means that the corresponding wordings are not unconstitutional and therefore cannot be repealed.

Against the background of the foregoing considerations, the following parts of Sec. 3 (2) KSG 2011 shall be deleted in order to establish a constitutional state of affairs:

„ (2) To develop measures to comply with the maximum quantities in the respective sectors hebe19 Verhe19fil.N1<Jqe19 Jklttz1iff191itm. In 6lcm Vc.-hen6lh.11<Jqen. particular consideration shall be given to possible measures in the following areas: increasing energy efficiency, increasing the share of renewable energy sources in final energy consumption, increasing overall energy efficiency in the building sector, incorporating climate protection into spatial planning, mobility management, waste prevention, protecting and expanding natural carbon sinks, and economic incentives for climate protection.

Measures can also be developed in the form of multi-year programs of measures and as joint measures by regional authorities. Responsibility zw- Fiiknmg vorl Verh€1Md-h1nqon in the respective sectors is incumbent on the federal ministers responsible analogous to the Climate Strategies 2002 and 2007, subsidiarily to the federal ministers responsible under the 1986 Federal Ministries Act (BlyfG), Federal Law Gazette No. 76, as amended. :9i-e Verhm.1-dh.1.ngel'l: siittd je:11-eil.s eiNe12 }lon€1t wach i'Brliegen ei'l'le:l' Vwsehk-gs sl-it JhmdeJminhtCJrs fii.r La19d M'l:61 Forntwirtse.½aft. Umwdt M'l'd Wasfiewirtseheffi gem€f(J para. 1 all{zw'lehi WN. The verhaH61lungeli simi respectively iHHer.½al:b veR ROHH }fel'l:ekm ver Begin:1 eil':eJ Verpfiehtit'l:qszeitreums, e.l.cffl is fii.r fell'l VerpfiehmHqswitraw'l' 2:013 to 202:0 Je1- 31. Ma.-: 2012. ae:::ttfiehheflen. In the event that the maximum quantities of greenhouse gas emissions applicable to the Republic of Austria as of 2013 are exceeded, **further** negotiations on the strengthening of existing measures or the introduction of additional measures shall be held without delay on the basis of an E>¥1:uien:1nq iler qo6 E:tCJ1'1 }f-a/Jn€l-i/½119en. Such negotiations shall in each case be completed within six months."

6.1.2 The prüfungsgegenständlichen parts of the § 3 Abs 2 KSG violate the applicants' subjective rights to equality before the law pursuant to Art. 7 of the Federal Constitution.
VG or Art 2 StGG

a) *On the infringement of subjective rights of the applicant in the case of violation of the general requirement of objectivity.*

The general principle of equality regulated by constitutional law in Art 7 B-VG and Art 2 StGG includes, among other things, the requirement of "**fair**" **burden sharing**; this means that the welfare of the old may not be realized at the expense of the few³⁰² Accordingly, everyone who is able to make a contribution to the realization of the common good is, as a matter of principle, to be involved.³⁰³ In the context of climate protection, the establishment of legal equality requires that the legal system be designed in such a way that the **burdens** associated with the climate crisis and the fight against it - taking into account the respective capabilities of the individual - are shared by all.

- The result is that the **entire population** of Eastern Italy will have to bear **an equal share** of the costs. This applies in particular to the **restrictions of fundamental rights**³⁰⁴ associated with the (drastic) reduction of GHG emissions, as well as to the distribution of the burdens associated with the **consequences of climate change**.³⁰⁵

From the general principle of equality according to Article 7 of the Federal Constitution and Article 2 of the Constitutional Law, the **general principle of equality** is derived, according to which, irrespective of whether there is unequal treatment of the same or unequal treatment of the same, legislation must in all cases and at all times serve a **public interest** and must seek to achieve this by appropriate, necessary and proportionate means. If this is not the case, the regulation is unobjective and therefore unconstitutional.³⁰⁶ The **purpose of the KSG 2011** is to facilitate the coordinated adoption of effective climate protection measures and thus to ensure a rapid reduction of GHG emissions.³⁰⁷ In order to comply with the principle of equality, the individual

³⁰² Cf. *Puschl*, Gleichheit vor dem Gesetz (2008) 175.

³⁰³ Cf. *Puschl*, Gleichheit vor dem Gesetz (2008) 175.

³⁰⁴ Cf. DtBVerfG 24.3.2021, 1 BvR 2656/18, para 117 ffw,d 186 f

³⁰⁵ See above under point 6.1.1; a see also *IPCC*, Climate Change 2022: Impacts, Adaptation and Vulnerability (Working Group II), Summary for Policymakers (2022) 9 and 15; Dt BVerfG 24.3.2021, 1 BvR 2656/18, para 20 ff; *Wissenschaftlicher Beirat der deutschen Bundesregierung Globale Umweltveränderungen*, Sondergutachten Klimaschutz als Weltbürgerbewegung (2014) 30 and 64; *UN High Commissioner for Refugees (UJVHCR)*, Klimawandel und Bevölkerungsbewegungen <lurch Naturkatastrophen (2017) 1 ff *IPCC*, Special Report: Global Warming of 1.5°C - Summary for Policymakers (2018) 12; *Rahmstorf/Schellnhuher*, Climate

Change⁹ (2019) 71 w,d 75.

³⁰⁶ See *Berka*, *Verfassungsrecht*⁸ (2021) Rz 1650; see also VfSlg 20.144/2017.

³⁰⁷ Cf. § 1 KSG 2011; EBRV 1255 BlgNRX.'CTV. GP, 2 f

The content of the provisions of the KSG 2011 must therefore be designed in such a way that they are at least potentially suitable for achieving this purpose and, in addition, lead to a fair distribution of the burdens that are or will be associated with the GHG savings to be made.

For the case at hand, this means that in the KSG 2011, the legislator has allowed the taking
The burden of the (freedom) restrictions caused by the GHG reduction measures has to be distributed equally among the individual fundamental rights holders. This **equal distribution of burdens** must be ensured both in the **present** and over the **entire period until GHG neutrality is achieved**. Therefore, children living today should not be expected to bear the main burden of these restrictions.³⁰⁸ At the same time, the design of the regulations must also ensure the **actual effectiveness** of the measures in terms of their real GHG reduction potential in order to at **least potentially achieve the goal** pursued by the KSG 2011 within the remaining time period. Since standards must comply with the general requirement of objectivity at all times and not at the time of their entry into force, the intertemporal unequal distribution of burdens deliberately accepted by the legislator is in any case contrary to this requirement.³⁰⁹ This violates the constitutionally guaranteed rights of the applicants to equality before the law pursuant to Article 7 of the Federal Constitution and Article 12 of the Constitutional Law, who, as a result of the violation of the general requirement of objectivity, are made to bear the main burden of the climate crisis.

The parts of Sec. 3 (2) KSG 2011 that are the subject of **the** proceedings violate the **requirement of fair burden sharing**,³¹⁰ in that GHG ceilings are to be set exclusively for commitment periods that have already passed, the most recent of which related to the period from 2013 to 2020.³¹¹ Accordingly, no new GHG ceilings were set after 2020, which in fact meant that since then GHG reduction measures have been taken without any coordination and without overestimating their savings potential, provided that measures have been taken in this area. One of the consequences of this is that OsteITeich is currently far from that

³⁰⁸ Vgl. dazu auch DtBVerfG 24.3.2021, 1 BvR 2656/18, Rn 117 ff. und 186.

³⁰⁹ VfSlg. 11048/1986, 12,753/1991, 13,777/1994, 16,374/2001, 18,731/2009.

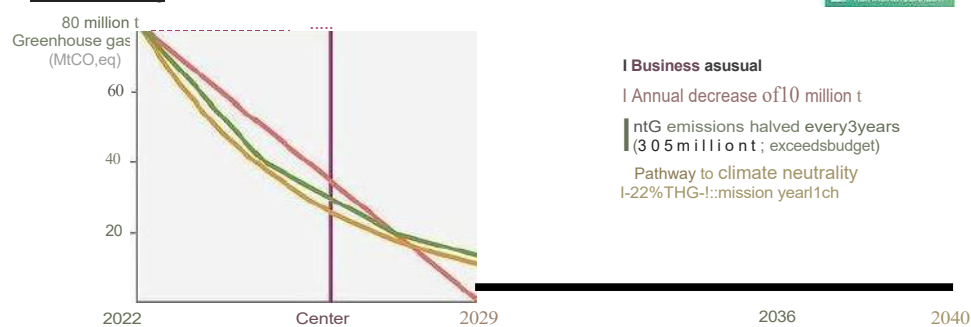
³¹⁰ Cf. *Poschl*, Equality before the Law (2008) 175

³¹¹ Siehe dazu bereits unter point 6.1.1; cf. § 3 para 2 and Anl 1 and 2 KSG 2013.

GHG reduction path that, according to current science, would be necessary to achieve the Paris climate targets.³¹² Consequently, the de facto remaining budget of GHG emissions (280 MtCO₂eq) is currently being eroded at a rapid pace and will be completely used up by 2025 if current GHG reduction rates are maintained.³¹³

Selection of possible GHG reduction pathways for Austria

while maintaining the temperature gre,iz value of +1,5°Cmil 66% probability remaining budget van 280 MtCO₂eq



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Without the specification of a **stringent GHG reduction path**, it is impossible to fulfill the obligations of national and European Union law in the area of climate protection, since only through the creation of an orientation basis can *"the indispensable development and planning of appropriate technologies and practices"* be initiated and demanded to the extent necessary for the achievement of the Paris climate goals.³¹⁵ Only in this way is it possible to *create "a planning horizon against which the incentive and pressure to initiate the required, sometimes protracted developments on a large scale can arise"*.³¹⁶ However, instead of creating or initiating a stringent GHG reduction plan, § 3 para 2 first sentence KSG 2011 only regulates the mere obligation of the federal ministers to conduct negotiations and thus has the consequence that ostensible (bogus) climate protection measures are listed in catalogs of measures in an uncoordinated and unfiltered manner, without

³¹² Cf. *Umweltbundesamt*, Austria's National Inventory Report 2022, REP-081 (2022) 53 ff; *Steininger et al*, +1,5°C: How much more greenhouse gases diirl we emit? - Background paper on global and national greenhouse gas budgets, CCCA (2022) 12 ff and 18 <https://www.cecaac.at/fileadmin/00_DocumentsMain_m enue/02_Climate_Knowledge/Papers/TIIG-Budget_Background_Paper_CCCA.pdf> (Dec. 14, 2022).

³¹³ Cf. *Steininger et al*, +1,5°C: How much more greenhouse gases can we emit? - Background paper on global and national Greenhouse gas budgets, CCCA (2022) 12 ff and 18 <https://www.cecaac.at/fileadmin/00_DocumentsMain_menu/02_Climate_Knowledge/Papers/TIIG-Budget_Background_Paper_CCCA.pdr> (Dec. 14, 2022).

³¹⁴ Cf. CCC4, graph accompanying the report „+1,5°C: How much more greenhouse gases dii we emit? - Background paper on global and national Greenhouse Gas Budgets" (2022) <<https://ceca.ac.at/transfer-of-knowledge/info l mation-documentsgreenhouse-gas-budget-background-paper>> (Feb. 18, 2023).

³¹⁵ Vg!Dt BVeifG 24. 3.2021, 1 BvR 2656/18, para 252.

³¹⁶ Vg!Dt BVeifG 24. 3.2021, 1 BvR2656/18, para 253.

that a corresponding quantification of their actual GHG reduction effect is carried out or that they are reviewed with regard to possible interactions with other measures.³¹⁷ The obligation to negotiate nonnated in § 3 para 2 KSG 2011 has so far led to a situation where de facto ineffective or ineffectively limited GHG reduction measures have been supplemented on the basis of the KSG 2011, as can be seen in particular from the GHG emissions of Eastern Austria, which have only decreased minimally since 1990.³¹⁸ Furthermore, the § Section 3 (2) of the Climate Change Act 2011 refers exclusively to past periods with regard to the obligation to negotiate, which is why no negotiations are currently being held on the development of effective GHG reduction measures, nor have corresponding GHG ceilings been set in the annexes to the Climate Change Act 2011 for the period after 2020.³¹⁹ In this way, the KSG 2011 **directly transfers the burden of** the climate crisis and its consequences, as well as the **burden of** combating it, **to younger generations who** will have to bear it in the future. Neither is the pursuit of a legitimate public interest discernible in this, nor would an unfair burden-shifting of such magnitude be considered proportionate. § Section 3 (2) KSG 2011 in its current version thus violates the general principle of objectivity and the principle of fair burden sharing and therefore infringes the applicants' constitutional right to equality before the law pursuant to Article 7 B-VG and Article 2 StGG.

As already ^{mentioned}, despite the entry into force of the KSG in 2011, the GHG emissions of Eastern Austria have **decreased only slightly since 1990**. In 2021, GHG emissions were only 1.9% lower than in the base year 1990.³²⁰ According to forecasts, a GHG reduction in the range of -3% to -5% is expected for 2022 compared to 2021,

³¹⁷ Cf. *BA1K*, Maßnahmentabelle des Bundes und der Länder gemäß § 3 Abs. 2 vorletzter Satz KSG für die Jahre 2019 und 2020 <https://www.bmk.gv.at/dam/jcr:4851eabd-a9c7-46e2-b855-928tb75tb5b9/KSG_Massnahmentabelle2019_2020.pdf> (Jan. 2, 2023); *BMLFUW* (now BMK), Program of measures 2013/2014 of the federal government and the federal states as a contribution to the achievement of the national climate target 2013-2020 <https://www.bmkgv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik/klimaschutzgesetz.html> (Feb. 15, 2023); *BMLFUW* (now BMK), Maßnahmenprogramm des Bundes und der Länder nach Klimaschutzgesetz zur Erreichung des Treibhausgasziels bis 2020 - Zweite Umsetzungsstufe für die Jahre 2015 bis 2018 <https://www.bmk.gv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik/klimaschutzgesetz.html> (Feb. 15, 2023).

³¹⁸ Cf. *Federal Environment Agency*, Austria's National Inventory Report 2022, REP-081 (2022) 53 ff.

³¹⁹ Cf. Section 3 (3) and Annexes 1 and 2 KSG 2011; for more details, see already Section 6.1.1.

³²⁰ Cf. *Umweltbundesamt*, Climate Protection Report 2022 (2022), REP-0816, 76 <<https://www.umweltbundesamt.at/fileadmin/site/publications/rep0816.pdf>> (Jan. 16, 2022); *Umweltbundesamt*, Austria's Annual Greenhouse Gas Inventory 1990-2021 (2023), REP-0841, 11 <<https://www.umweltbundesamt.at/fileadmin/site/publikationen/rep0841.pdf>> (Jan. 23, 2023).

However, this is primarily due to Russia's war of aggression on Ukraine and the related energy crisis.³²¹ These developments prove that the partial parts of § 3 para 2 KSG 2011 result in an equitable burden sharing of the scientifically demonstrably limited THO budget. However, it is essential that this be observed in order to limit the impact of the climate crisis to a fundamentally contractual extent. The KSG 2011 in general and the countervailing parts of § 3 para 2 KSG 2011 in particular generate a state in which both increases and reductions of GHG emissions depend to a large extent on the **development of the "May-kt"** and thus on **economic coincidences**. A targeted regulation or control on the part of the state, on the other hand, cannot take place on the basis of pure negotiation obligations and limited commitment periods, which in turn leads to a shifting of the burdens associated with the necessary GHG reduction into the future. These burdens will then predictably have to be borne by children living today - and thus also by the applicants.³²² IdS, the parts of § 3 para 2 KSG 2011 relevant for the partial counteract the objective of the KSG 2011, interfere with and violate the applicants' legal sphere, which is split by the general principle of equality and the **general requirement of objectivity resulting** from it.

No factual **justification** can be found for the violation of the requirement of fair burden sharing or for the counteracting of the objective of the KSG 2011 by the content of the contested provisions. Such an objective could only be achieved by minimizing the burden of climate protection measures on the currently living population and - within this population - especially on the group of adults, which, however, would be accompanied by an **obvious overburdening of children living today in the future**.³²³ Against the backdrop of the irreversible and scientifically

³²¹ Cf. *Federal Environment Agency*, Press Release: Treibhausgas-Bilanz Österreichs 2021 - Rückblick auf die Emissionen 2021, Ausblick auf 2022, 2030 und 2040 <<https://www.umweltbundesamt.at/news230123>> (Jan. 23, 2023); *Österreichisches Institut für Wirtschaftsforschung (WIFO)*, WIFO Konjunkturprognose 4/2022 - \Neltweiter economic downturn, captures Austria (2022) 3 and 14 <https://www.wifo.ac.at/jart/prj3/wifa/resources/person_dokument/person_dolaunentjart/publik.atonsid=70406&mirne_type=application/pdf> (Jan. 23, 2023).

³²² Cf. Dt BVerfG 24. 3.2021, 1 BvR 2656/18, para 117 ff and 186.

³²³ Cf. *Daniel Hellden et al*, Climate change and child health: a scoping review and an expanded conceptual framework, *Lancet Planet Health* 2021/5, 164 <[https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(20\)30274-6/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(20)30274-6/fulltext)> (Jan. 25.2023); *Nick Wattset al*, The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate, *Lancet* 2019/394, 1836 ff <[https://www.thelancet.com/Journals/lancet/article/PIIS0140-6736\(19\)32596-6/fulltext](https://www.thelancet.com/Journals/lancet/article/PIIS0140-6736(19)32596-6/fulltext)> (Jan. 25, 2023).

In view of the almost certainly foreseeable catastrophic situations to which children living today - and thus also the applicants - will be exposed in the future as a result of the ever more escalating climate crisis, this cannot **of** itself constitute a **legitimate public interest**. Therefore, this alleged reason cannot justify the massive interference with the applicants' right to equality before the law within the meaning of Article 7 of the Federal Constitution and Article 2 of the Austrian Constitution.

Even if one wanted to recognize legitimacy in such a reasoning, it is to be noted in this respect, in accordance with the case law of the Constitutional Court, that the legal system accepts "*in many contexts, human behavioral patterns which in one way or another may have (also considerable) negative consequences for other people or the general public, because the legislator values the gain in freedom more highly than the adverse consequences*".³²⁴ However, the legislator has the duty to "**reconcile the freedom of some with the need for protection of others and with the public interests**", whereby the principle of equality "*requires prohibitions of self-determined freedom of action at least when the realization of freedom is disproportionate*".³²⁵ In the case at hand, the need for protection of the applicants as children (younger generations) is not reflected in § 3 para 2 KSG 2011.

The "gain in freedom" of today's adults (older generations) is given disproportionately great weight, which completely supersedes all other interests to be taken into account. The reasoning would therefore have to be qualified as **disproportionate** and must therefore be ruled out in any case as a justification of the violation of the general principle of equality resulting from the general requirement of objectivity.

Against this background, the parts of § 3 (2) KSG 2011 which are the subject of the appeal **violate** the general requirement of objectivity arising from the general principle of equality and **infringe** the applicants' right to equality before the law pursuant to Article 7 of the Federal Constitution and Article 2 of the Austrian Constitution. The challenged provisions are therefore to be repealed as unconstitutional for this reason alone.

b) On the violation of the subjective,1 rights of the claimants:ime11 on the grounds of breach11 of the general principle of equity

³²⁴ Cf. VfGH 18.6.2019, G 150/2018 et al.

³²⁵ Cf. VfGH 18.6.2019, G 150/2018 ua (own emphasis).

In addition to the above, children (under 18 years of age) are defined as "Younger generations" also differ from other persons as a **comparison group in the** context of climate protection by the **essential difference** that they have a longer **total lifetime in** the context of an average consideration compared to the group of "older generations" (over 18 years old). Thus, in the case of non-compliance with climate targets, younger generations have to bear a **disproportionately higher burden** in the form of a drastically increased GHG reduction need, the resulting considerable curtailment of their constitutionally protected freedoms, and climate-induced extreme events.³²⁶ In addition, younger generations have a **much smaller influence on the current development of GHG emissions** due to their limited (legal) freedom of action and lack of opportunities to participate in **the** political discourse. In the future, they will almost certainly bear the brunt of the failures in climate protection and GHG reduction, while they currently have very little actual influence on the measures currently required in the area of climate protection. On the other hand, adults have on average a (much) shorter lifetime and at the same time a significantly larger impact on GHG emissions and their development.

Although the transition between the two groups is fluid with regard to the demarcation criterion "lifetime", it can in any case be assumed in the context of an average consideration that children (younger generation) will in the future have to bear the **main part of the burdens caused by the unchecked climate crisis** compared to adults (older generations).³²⁷ In the contrary case, therefore, the group of "younger generations" (up to

³²⁶ Cf. DtBVerfG 24.3.2021, 1 BvR 2656/18, para 117 ff and 186; *Daniel Helldin et al*, Climate change and child health: a scoping review and an expanded conceptual framework, *Lancet Planet Health* 2021/5, 164. [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(20\)30274-6/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(20)30274-6/fulltext) (Jan. 25, 2023); *Nick Watts et al*, The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate, *Lancet* 2019/394, 1836 et seq. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32596-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32596-6/fulltext) (Jan. 25, 2023).

³²⁷ Cf. *IPCC*, *Climate Change 2022: Impacts, Adaptation and Vulnerability (Working Group II), Summary for Policymakers* (2022) 9 and 15; DtBVerfG 24.3.2021, 1 BvR 2656/18, Rn 20 ff; *Wissenschaftlicher Beirat der deutschen Bundesregierung Globale Umweltveränderungen*, *Sondergutachten Klimaschutz als Weltbürger Movement* (2014) 30 and 64; *UN High Commissioner for Refugees (UNHCR)*, *Climate Change and Population Movements due to Natural Catastrophes* (2017) 1 ff *IPCC*, *Special Report: Global Warming of 1.5°C. - Summary for Policymakers* (2018) 12; *Rahmstorf/Schellnhuber*, *Climate Change*⁹ (2019) 71 and 75.

to the age of **18**) with those of the adult population (all persons aged 18 and over).³²⁸

Both the limitation of the commitment periods for GHG reduction measures contained in Section 3 (2) of the Climate Change Act 2011 to the end of 2020 and the stipulation of a pure obligation of federal ministers to negotiate on the development of effective GHG reduction measures burden Section 3 (2) of the Climate Change Act 2011 with a degree of ineffectiveness that is tantamount to a **qualified omission**.³²⁹ As a result, § 3 para 2 KSG 2011 in its current version leads to a failure to meet the 1.5°C target of the Paris Climate Change Agreement.³³⁰ The more time elapses without the definition of a GHG reduction path that must be complied with, **the more serious interference with civil liberties** will be necessary in the future in order to achieve the required drastic GHG reduction in the shortest possible time; due to the serious consequences of the climate crisis, drastic adaptation measures also seem to be necessary.³³¹

§ Section 3 (2) of the KSG 2011 in its current form perpetuates the *status quo* in climate protection law, which allows excessive lifestyles - especially by older generations - which in turn is associated with an increase in emissions of 11 GHG. As a result, Eastern Europe's GHG emissions have decreased only minimally since 1990.³³² The inevitable consequence of maintaining this trend is that the applicants, as children, will have to bear both the **burden of the aforementioned extreme events** and their effects, as well as those **restrictions on the freedoms protected by fundamental rights that** are necessary for the massive minimization of GHG emissions.

³²⁸ Cf. *Poschl*, Gleichheit vor dem Gesetz (2008) 205 ff; see also § 21 Allgemeines bürgerliches Gesetzbuch (ABGB), JGS 946/1811 idF BGBl I 59/2017; on the distinction according to age iZm dem BVG Kindenechte see *Fuchs*, Kinderrechte in der Verfassung: Das BVG Ober die Rechte von Kindern, in: Lienbacher/Wielinger (eds.), Jahrbuch Öffentliches Recht 2011 (2011) 91 (103 f).

³²⁹ See here its in detail under Punh.1: 6.1.1.

³³⁰ Vgl. Art 2 para 1 lit a Paris Climate Convention; see also *Steininger et al*, +1,5°C: How much greenhouse gases Are we still allowed to emit? - Background paper on global and national greenhouse gas budgets, CCCA (2022), 12 ff and 18 <https://www-w.ccca.ac.at/fileadmin/00_DokumenteHauptmenu/02_KLimawisseneruPapiere/THG-Budget_Background_Paper_CCCApdf> (12/14/2022).

³³¹ Cf. Dt BVerfG 24.3.2021, 1 BvR 2656/18, para 117 ff uncl 186; see also already in detail under.

Item 6.1.1.

³³² Cf. *Federal Environment Agency*, Climate Protection Report 2022 (2022) 76

<<https://www.umweltb1.mdesamt.at/fileadmin/site/publikationen/rep0816.pdf>> (Jan. 16, 2022); *S-teininger et al*, +1.5°C: How much more greenhouse gases are we allowed to emit? - Background paper on global and national Greenhouse gas budgets, CCCA (2022) 16 <https://www.ceca.ac.at/fileadmin/00_DokumenteHauptmenu/02_Klimawissen/PapieretTHG-Budget_background_paper_CCCApdf!> (13.1.2022).

The new law thus shifts the main burdens associated with the consequences of the climate crisis and the drastic GHG reductions that will be required in the near future to the public purse.³³³ The KSG 2011 thus **shifts the main burdens** associated with the consequences of the climate crisis and the drastic GHG reductions **that** will become necessary in **the future** to the younger generations (= children). Section 3 (2) of the KSG 2011 treats equal (members of society as a whole with the right to equal distribution of restrictions on liberty) equally by imposing on younger generations - and thus on the applicants - in the future unequally greater restrictions on their liberties protected by fundamental rights as well as the burden of the consequences of the climate crisis in an immediate and foreseeable manner.³³⁴ The group of older generations, on the other hand, will be **allowed to maintain an excessive lifestyle**, which is associated with blatantly high GHG emissions.

In this case, the situation would be in line with the **general principle of equality** if the restrictions on constitutionally protected freedoms associated with rapid GHG reductions were distributed equally among the population as a whole over the entire remaining period **until GHG neutrality is achieved**.³³⁵ This would meet element of the KSG 2011 as well as element of the principle of equitable burden sharing. However, this is rendered equally impossible by the pure obligation to negotiate on exclusively limited and now expired commitment periods, which is currently non-nated in § 3 para 2 KSG 2011.

A **legitimate purpose**, which may be <limited by the current design of the **§ The only tangible purpose would be to ensure the least** possible burden on the population as a whole living in the present. The only tangible purpose would be to ensure the lowest possible burden on the total population living in the present and thus to maximize the freedom of mainly the older generations living today. This, however, blatantly violates the principle of fair burden sharing.³³⁶ The **aim of** granting maximum freedom to older generations in the present at the expense of younger generations in the future is therefore **not to be regarded as legitimate** and cannot justify the unjustified unequal treatment of younger and older generations.

³³³ Cf. DtBVerfG 24.3.2021, 1 BvR 2656/18, para. 117 ff and 186.

³³⁴ See <lazu already in detail under point 6.1.1 and 6.1.2.a.

³³⁵ See *Poschl*, Equality before the Law (2008) 175.

³³⁶ See *Poschl*, Equality Before <lem Law (2008) 175.

Even if one were to recognize a legitimate purpose, the excessive burden on the applicants (= younger generations), both with the consequences of the escalating climate crisis and with the GHG reduction obligation in the future, would in any case be considered **disproportionate**.³³⁷ Therefore, a justification of the unequal treatment of younger and older generations by § 3 para 2 KSG 2011 is already ruled out.

Against this background, Section 3 (2) KSG 2011 is to be regarded as an unobjective and disadvantageous unequal treatment of applicants (younger generations) compared to older generations, which cannot be justified by a legitimate purpose. They therefore violate the general principle of equal treatment as set forth in Article 7 of the Federal Constitution and Article 2 of the Austrian Constitution, thereby violating the constitutionally guaranteed rights of applicants to equality before the law pursuant to Article 7 of the Federal Constitution in conjunction with Article 2 of the Austrian Constitution, and are therefore to be repealed as unconstitutional.

c) *On the concrete unconstitutionality of prüfungsgegenständlichen word sequences d,es § 3 Para 2 KSG 2011*

The above-mentioned violations of the applicants' constitutionally guaranteed rights to equality before the law pursuant to Article 7 of the Federal Constitution and Article 2 of the Austrian Constitution relate to the effect of Section 3 (2) of the Austrian Act on the Prevention of GHG Emissions in its current version, which prevents the adoption of effective GHG reduction measures. With regard to the elimination of this unconstitutional situation, the petitions for repeal in relation to the unconstitutionality of Section 3(2) KSG 2011 therefore coincide in content with the petitions for deletion already challenged under item 6.1.1.c above.³³⁸ For this reason, reference is to be made to the explanations under item 6.1.1.c with regard to the repeals of the unconstitutional parts of Section 3 (2) KSG 2011.

6.1.3 On the Violation of the Rights of AtI tragsteller: itmen gem Alt 4 B-VG Children's Rights

Furthermore, the applicants' rights resulting from Art. 4 B-VG Children's Rights are violated to the extent that it is neither evident from the KSG 2011 itself nor from the published legislative materials that the **interests of children are to be taken into account**.

³³⁷ See already above with point 6.2.1.

³³⁸ See clazu under point 6.1.1.c.

m were raised, taken into account or weighed against other public interests in any form during the process of drafting the law.³³⁹ Since the KSG 2011 is - as described above - a law relevant to the group of children as defined by the Federal Constitutional Law on Children's Rights, which directly serves to define the rights enshrined in Art. 1 of the Federal Constitutional Law on Children's Rights in simple law, the **interests of** children should at any rate have been **ascertained in** the process of drafting the law, and a **reasoned discussion** should have taken place.³⁴⁰ This is especially true **in** view of the fact that the KSG 2011 came into force **after** the BVG Children's Rights.³⁴¹ By omitting any substantive or other discussion of children's interests in the context of taking effective climate protection measures, the contested provisions already violate the applicants' constitutionally guaranteed rights to the protection of their interests and participation pursuant to Article 1 in conjunction with Article 4 of the Federal Children's Rights Act.

6.2 Zmn Contingent Motion- Additional deletion of parts of § 3 para 1 KSG 2011

In the event that the Constitutional Court is of the opinion that the constitutional situation cannot be restored by the deletion of the parts of Section 3 (2) of the KSG 2011 challenged in items 6.1.1 and 6.1.2 because the main application is too narrowly formulated, the applicants submit the contingent application that, in addition to the deletions asserted in the main application, the parts of the KSG 2011 challenged below should also be deleted.

§ Section 3 (1) KSG 2011 in order to establish a constitutionally compliant situation. The subject-matter of the contingent application thus encompasses the amendments already asserted in the main application and goes beyond them. With regard to the deletions already asserted in the main motion, reference is made to the above explanations under items 6.1.1 and 6.1.2.

In addition, the following parts of Sec. 3 (1) KSG 2011 are requested to be repealed:

(1) The maximum levels of greenhouse gas emissions applicable to the Republic of Austria under national or EU law shall not exceed

³³⁹ See iB EBRV 1255 BlgNR X.-IV. GP, 1 ff

³⁴⁰ Cf. *Fuchs*, Kinderrechte in der Verfassung: Das BVG über die Rechte von Kindern, in: Lienbacher/Wielinger (eds.), *Jahrbuch Öffentliches Recht* 2011 (2011) 100.

³⁴¹ The BVG Kinderrechte entered into force on 16.2.2011 and the KSG 2011 on 22.11.2011.

The maximum quantities are determined by the plants. The maximum levels can also be set on a sectoral basis. The preparation of planning bases for the allocation of maximum greenhouse gas emissions to sectors for commitment periods starting in 2013 shall be based on a proposal by the Federal Minister for Agriculture, Forestry, Environment and Water Management on the basis of domestically effective measures. This proposal shall also be submitted to the National Climate Protection Committee (§ 4). The final allocation shall be recorded in an annex to this Act.

(2) For the elaboration of measures to comply with the maximum quantities in the respective sectors hahe19 Verhanc/hmge19 stat=evtfil9deR. In the 19 negotiations, particular consideration shall be given to possible measures in the following areas: increasing energy efficiency, increasing the share of renewable energy sources in final energy consumption, increasing the overall energy efficiency in buildings, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption, increasing the share of renewable energy sources in final energy consumption. The measures can also be developed in the form of multi-annual action programs and as joint measures by local authorities. Responsibility z1trFii.hn.mq vo19 Verha1frfi'ttngel1 in the respective Selrtoren is incumbent on the federal ministries responsible analogously to the Climate Strategies 2002 and 2007, and subsidiarily on the federal ministries responsible pursuant to q/3 Federal Ministries Act 1986 (BMG), Federal Law Gazette No. 76, as amended. J:}ffl Ve1-ha1<Jdh.1:xqen silqd jewe1s ei1<Je1<J }1e1<Jat 19aeh Verbegea a& Versehl.aqs 61-e&

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Exceeding the maximum levels of greenhouse gas emissions applicable to the Republic of Austria from 2013 onwards in accordance with the obligations under national or EU law sine! 6Ht{Baaia ai11er EFS1iwiennmq sJ.er qe5efZtm1 }f.e/foahmmq immediately far.e."C negotiations ilber the Stirkung of existing or Einfii.Einführung

zusätzlicher Maßnahmen zu führen. These negotiations shall be concluded within six months.

(3) The result of the negotiations gemajJ para. 2 shall be recorded separately. The specified J...faf]measures shall be implemented without delay.

(4) The Federal Minister for Agriculture, Forestry, Environment and Water Management shall report to the National Climate Protection Committee (§ 4) on the outcome of the negotiations in accordance with paragraph 3(2) and the measures determined in accordance with paragraph 3(3).

§ The Federal Minister of Agriculture, Forestry, Environment and Water Management shall submit an annual written report to the National Council and the National Climate Protection Committee on the progress made in complying with the maximum quantities of greenhouse gas emissions set pursuant to Article 3 para. The report shall be broken down by sector in accordance with the annexes."

§ Section 3 (1) first and second sentence of the KSG 2011 reads as follows: *The maximum levels of greenhouse gas emissions applicable to the Republic of Austria in accordance with its obligations under national and European Union law shall be determined in accordance with the installations. The maximum levels may also be determined on a sectoral basis. It thus lays down the structural basis for "the allocation of the established greenhouse gas emission ceilings" as well as for the "allocation of the greenhouse gas emission ceilings".*

*Negotiations for the development of measures", as already the title of § 3 KSG 2011 proclaims.³⁴² However, § 3 para 1 first sentence of the KSG 2011 does **not** name an **active obligation** in the form of a "shall" or "must" concept, but is defined **descriptively**: GHG highs "are set according to the plant".³⁴³ From a structural point of view, this means that the obligations of § 3 KSG 2011 are based exclusively on the GHG ceilings specified in the Annexes to the KSG 2011; the directly applicable provisions of EU law in this area - which in turn are based directly on the obligations under international law of the Paris Climate Agreement - are therefore not intended to form the basis for the negotiation of the ceilings pursuant to § 3 (2) KSG 2011.³⁴⁴ Only if maximum quantities have been specified in the Annexes to the Climate Change Act 2011 within the meaning of Section 3 (1) first sentence leg cit GHG, there is also an obligation to negotiate pursuant to Section 3 (1) second sentence leg cit GHG.*

³⁴² See title of § 3 KSG 2011.

³⁴³ Cf. § 3 para I first sentence KSG 2011.

³⁴⁴ Cf. § 3 para. 1 first sentence KSG 2011.

§ 3 Para 2 KSG 2011 über GHG reduction measures to compliance this Highest quantities.³⁴⁵

However, due to the purely descriptive character of § 3 para 1 first sentence KSG 2011, there is no explicit obligation to set GHG ceilings, so no such ceilings have been issued for the period after 2020.³⁴⁶ Since § 3 para 2 KSG 2011 refers both to compliance with the GHG ceilings specified in the annexes and to time-limited commitment periods, there is currently no obligation on the part of the federal ministers to negotiate effective GHG reduction measures on the basis of the KSG 2011.³⁴⁷

According to the explanations under 6.1.1 and 6.1.2, the current formulation of § 3 para 1 KSG 2011 also prevents the adoption of effective GHG reduction measures in the manner described above. This is primarily due to the fact that the adoption of measures according to § Section 3 (2) of the KSG 2011 is ultimately based on the determination of GHG peak quantities in the Annexes to the KSG 2011, but such a determination is not mandatory under Section 3 (1) of the KSG 2011 and was therefore not carried out for periods after 2020. If there are no GHG peak quantities in the KSG plants for a certain period of time, there is no obligation to take GHG reduction measures. A legally qualified omission to take effective climate protection measures violates both the genuine duty to protect the best interests of the child pursuant to Article 1 of the Federal Constitution (B-VG) Child Rights in conjunction with Sections 1 and 3 of the Federal Constitution (BVG) Sustainability and Article 24 GRC in conjunction with Article 37 GRC, as well as the general principle of objectivity, the principle of proportionality and the principle of proportionality. fair distribution of burdens and the general principle of equality pursuant to Art. 7 B-VG and Art. 2 StGG.³⁴⁸

The applicants' rights to the protection of the best interests of the child and equality before the law, which are constitutionally guaranteed by the aforementioned provisions, are therefore violated.³⁴⁹ Against this background, the challenged parts of Sec. 3 (1) and (2) KSG 2011 are to be repealed as unconstitutional.

³⁴⁵ Cf. § 3 paras 1 and 2 KSG 2011.

³⁴⁶ See] 1 and 2 KSG 2011, which relate exclusively to periods up to the end of 2020.

³⁴⁷ Cf. § 3 para 1 wid 2 and Annex 1 wid 2 KSG 2011.

³⁴⁸ See in detail the information provided under points 6.1.1 and 6.1.2.

³⁴⁹ See already in detail under points 6.1.1 and 6.1.2; cf. Art 1 BVG Children's Rights iVm §§ 1 and 3 BVG Sustainability; Art 24 para 1 GRC iVm Art 37 GRC; Art 7 B-VG and Art 2 StGG.

Since § 6 KSG 2011 ^{refers to} the GHG maximum quantities "*determined*" in accordance with § 3 (1), the declarative reference to the maximum quantity determination in accordance with § 3 (1) is to be deleted in the case of the removal of the declarative reference to the maximum quantity determination in accordance with § 3 (1).

§ Section 3 (1) KSG 2011, this reference should also be deleted, as the two provisions are inseparably connected in terms of content. If the wording were to remain in the body of law, the obligation to report to the National Council and the National Climate Protection Committee pursuant to Section 6 of the Austrian Climate Protection Act 2011 would in fact be abolished, since such a report is only to be submitted in the event of the determination of maximum GHG quantities pursuant to Section 3(1) of the Austrian Climate Protection Act 2011. If, after the repeal of the corresponding wording in § 3 para 1 KSG 2011, no GHG ceilings are set, the reporting obligation under § 6 KSG 2011 would accordingly also cease to apply. This This, in turn, would be detrimental to the effectiveness of the adoption of GHG reduction measures, as it would remove an important control instrument with regard to the effectiveness of climate protection measures. In this respect, leaving this reference in the body of law would also violate the applicants' constitutionally guaranteed rights under Article 1 of the Federal Constitutional Law on Children's Rights and Article 7 of the Federal Constitutional Law as well as Article 2 of the Federal Constitutional Law.

7. **Aufhebungsbegehren**

Against the background of the above statements, the applicants submit to the Constitutional Court fo Igende

ATTACHM ENT:

1. The Constitutional Court may annul the following wordings in the following provisions of the Federal Act on Compliance with Maximum Quantities of Greenhouse Gas Emissions and on the Development of Effective Measures for Climate Protection (Climate Protection Act), Federal Law Gazette I 106/2011, as amended by Federal Law Gazette I 58/2017, in each case on account of the violation of rights guaranteed by constitutional law due to unconstitutionality:
 - m § 3 para 2 first sentence KSG 2011 the wording "**negotiations shall take place**";

- in § 3 para 2 second sentence KSG 2011 the wording "**In den Verhandlungen**";
- 111 Section 3 (2) fourth sentence of the KSG 2011 **the** wording "**for the purpose of Verhandlungen**";

- in § 3 para 2 fifth and sixth sentence KSG 2011 to the whole with the wording: **Negotiations shall commence one month after the submission of a proposal by the Federal Minister of Agriculture, Forestry, Environment and Water Management in accordance with Section 18 Abs.1. Negotiations shall be concluded in each case within nine months before the start of a commitment period, i.e. March 31, 2012, for the commitment period 2013 to 2020;**
- in § 3 para 2 seventh sentence KSG 2011 the wording "**on the basis of an evaluation of the measures taken**";
- in § 3 (2) seventh sentence KSG 2011, the wording "**further**".

2. In the event that this is the case, the Constitutional Court may annul the following wordings in the following provisions of the law on the grounds that they violate constitutionally guaranteed rights due to unconstitutionality:

- in § 3 para 1 first sentence KSG 2011 the wording "**shall be determined in accordance with the provisions**";
- in § 3 para. 1 second sentence KSG 2011 the wording "**the supersets**";
- in § 3 para 2 first sentence KSG 2011 the wording **„haben associations to take place."**
- in § 3 para. 2 second sentence KSG 2011 the wording "**In den Verhandlungen**";
- in Section 3 para 2 first sentence KSG 2011 the wording **„zur Durchführung von Verhandlungen**";
- in § 3 para 2 fifth and sixth sentence KSG 2011 to the whole with the wording: **Negotiations shall be held one month after the submission of a proposal by the Federal Minister of Agriculture, Forestry, Environment and Water Management. The negotiations shall be concluded within nine months prior to the start of a commitment period. Negotiations shall be concluded within nine months prior to the start of a commitment period, which for the commitment period 2013 to 2020 is March 31, 2012.**;
- in § 3 para 2 seventh sentence KSG 2011 the wording "**on the basis of an evaluation of the measures taken**";
- in § 3 para 2 seventh sentence KSG 2011 further the wording "**weitere**";
- in § 6 KSG 2011 the wording **„gemäß § 3 para. 1 established**".

3. In any case, the Constitutional Court shall order the applicants to pay the costs within the meaning of the Austrian Civil Code.

§ 27 of the Constitutional Court Act (VfGG).

The following costs are
recorded Individual application
EUR 2,180.00 Plus VAT EUR
436.00
Plus input fee EUR 480,00
Therefore a total of EUR 3,096.00