

CONSTITUTIONAL COURT G
123/2023-12
June 27, 2023

DECISION

The Constitutional Court, chaired by President DDr. Christoph GRABENWARTER,

in the presence of the Vice President
Dr. Verena MADNER

and the members Dr.
Markus ACHATZ,
Dr. Sieglinde GAHLEITNER,
Dr. Andreas HAUER,
Dr. Christoph HERBST,
Dr. Michael HOLOUBEK,
Dr. Helmut HÖRTENHUBER,
Dr. Claudia KAHR,
Dr. Georg LIENBACHER,
Dr. Michael MAYRHOFER,
Dr. Michael RAMI and
Dr. Ingrid SIESS-SCHERZ

and the substitute member
Dr. Nikolaus BACHLER

as voting leader, in the presence of the constitutional associate Matej SELEM, LL.M.

as secretary,

on the application 1. of mj. ***, represented by her mother *** and her father ***, 2. of mj. ***, represented by her mother *** and her father ***, 3. of mj. ***, represented by her mother *** and her father ***, 4. of mj. ***, represented by his father ***, 5. of mj. ***, 6. of mj. ***, 7. of mj. ***, all represented by their mother *** and father ***, 8. of mj. ***, 9. of mj. ***, 10. of mj. ***, all represented by their mother *** and father ***, 11. of mj. ***, represented by her father ***, and 12. of mj. ***, represented by his mother ***, all represented by the attorneys Mag.^a Michaela Krömer, LL.M. and Dr. Peter Krömer, Riemerplatz 1, 3100 St. Pölten, to repeal specified word and character sequences of the Climate Protection Act as unconstitutional, in its today's closed session:

The application is rejected.

Justification

I. Request

With their application based on Art. 140 para. 1 subpara. 1 lit. c B-VG, the applicants 1. The petitioner requests the Constitutional Court to annul certain word and character sequences in § 3 of the Federal Act on the Observance of Maximum Quantities of Greenhouse Gas Emissions and on the Development of Effective Measures for Climate Protection (Climate Protection Act - KSG), Federal Law Gazette I 106/2011, as amended by Federal Law Gazette I 58/2017, in each case due to the violation of constitutionally guaranteed rights as a result of unconstitutionality. The following word and character strings are requested for repeal:

"- in § 3 para 2 first sentence KSG 2011 the wording 'have to take place negotiations.';

- in § 3 para 2 second sentence KSG 2011 the wording 'In the negotiations';
- in § 3 (2) fourth sentence KSG 2011 the wording 'for the conduct of negotiations';
- in § 3 para 2 fifth and sixth sentence KSG 2011 in its entirety with the wording: 'Negotiations shall be commenced one month after the submission of a proposal by the Federal Minister of Agriculture, Forestry, Environment and Water Management pursuant to para 1. The negotiations shall be concluded within nine months before the start of each commitment period, which for the commitment period 2013 to 2020 shall be 31 March 2012';
- in § 3 para 2 seventh sentence KSG 2011 the wording 'on the basis of an evaluation of the measures set';
- in section 3(2) seventh sentence KSG 2011 further the wording 'further'."

In the alternative, the applicants seek the annulment of the following word and sign marks
follow

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"- in § 3 para 1 first sentence KSG 2011 the wording 'shall be in accordance with the annexes set.'

- in § 3 para 1 second sentence KSG 2011 the wording 'The maximum quantities';
- in § 3 para 2 first sentence KSG 2011 the wording 'negotiations shall take place';
- in § 3 para 2 second sentence KSG 2011 the wording 'In the negotiations';
- in § 3 para 2 fourth sentence KSG 2011 the wording 'zur Führung von Verhandlungen';
- in § 3 para 2 fifth and sixth sentence KSG 2011 in its entirety with the wording: 'Negotiations shall be commenced one month after the submission of a proposal by the Federal Minister of Agriculture and Forestry, Environment and Water Management pursuant to para 1. The negotiations shall be concluded within nine months before the start of each commitment period, which for the commitment period 2013 to 2020 shall be 31 March 2012';
- in § 3 para 2 seventh sentence KSG 2011 the wording 'on the basis of an evaluation of the measures set';
- in § 3 para 2 seventh sentence KSG 2011 furthermore the wording 'further';
- in section 6 KSG 2011, the wording 'established pursuant to section 3(1)'."

II. Legal situation

The relevant provisions of the federal law governing compliance with maximum 3 of greenhouse gas emissions and for the development of effective measures for climate protection (Climate Protection Act - KSG), Federal Law Gazette I 106/2011, as amended by Federal Law Gazette I 58/2017, read as follows (the word and character sequences contested with the main and the contingent motion are highlighted):

"Target

§ 1. The purpose of this federal law is to facilitate the coordinated implementation of effective measures to protect the climate.

Measures

§ Measures within the meaning of this Act are those that result in a measurable, reportable and verifiable reduction of greenhouse gas emissions or enhancement of carbon sinks, which are reflected in the Austrian greenhouse gas inventory in accordance with the applicable reporting obligations under international and European Union law. This includes sovereign and private-sector measures taken by the federal and state governments.

Allocation of established greenhouse gas emission ceilings; negotiations for the development of measures

§ (1) The greenhouse gas emission ceilings applicable to the Republic of Austria pursuant to obligations under international or Union law shall be determined in accordance with the Annexes. The ceilings may also be divided among sectors. The planning basis for the allocation of greenhouse gas emission ceilings to sectors for commitment periods from 2013 onwards shall be drawn up on the basis of a proposal by the Federal Minister of Agriculture, Forestry, Environment and Water Management on the basis of measures effective within Austria. This proposal shall also be submitted to the National Climate Protection Committee (§ 4). The final breakdown shall be recorded in an annex to this Act.

(2) Negotiations are to be held to develop measures to comply with the ceilings in the respective sectors. Negotiations shall in particular take into account 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, integrating 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 local authorities. The responsibility for conducting negotiations in the respective sectors lies with the federal ministries responsible for the 2002 and 2007 climate strategies, and subsidiarily with the ministries responsible under the Federal Ministries Act 1986 (BMG), BGBl. No. 76 in

the Federal Ministers responsible, as amended from time to time. Negotiations shall be commenced one month after the Federal Minister for Agriculture, Forestry, Environment and Water Management has submitted a proposal pursuant to subsection 1. Negotiations shall be concluded within nine months before the start of a commitment period, i.e. 31 March 2012 for the commitment period 2013 to 2020. If the greenhouse gas emission ceilings applicable to the Republic of Austria as of 2013 are exceeded in accordance with obligations under international or European Union law, further negotiations on the strengthening of existing measures or the introduction of additional measures shall be conducted without delay on the basis of an evaluation of the measures taken. These negotiations shall be concluded within six months.

(3) The result of the negotiations pursuant to para. 2 shall be recorded separately. The specified 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 pursuant to subsection 2 and the measures defined pursuant to subsection 3.

[...]

Progress Report

§ 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 greenhouse gas emission limits specified in section 3(1). The report shall be broken down by sector in accordance with the Annexes.

Climate Change Accountability Mechanism

§ The responsibilities in the event of an exceedance of the maximum quantities of greenhouse gas emissions applicable to the Republic of Austria as of 2013 in accordance with obligations under international or Union law shall be laid down in a separate agreement. For the commitment period from 2008 to 2012, the provinces shall not incur any financial obligations in the event that the maximum quantities of greenhouse gases specified in Annex 1 are exceeded. Any obligations of the federal government in the event that the maximum quantities of greenhouse gases specified in Annex 1 are exceeded shall be covered in compliance with the applicable federal financial framework law.

Enforcement

§ (1) The Federal Minister of Agriculture, Forestry, Environment and Water Management shall be entrusted with the enforcement of this Act, unless otherwise provided for in subsection 2.

(2) The Minister responsible under the Federal Ministry of Health shall be entrusted with the implementation of Section 3(2).

[...]

Entry into force

§ (1) Annex 2 as amended by Federal Law Gazette I No. 94/2013 shall enter into force at the end of the day on which it is promulgated.

(2) Article 1 of the Federal Act BGBl. I No. 128/2015 shall enter into force at the end of the day on which it is promulgated.

(3) Section 3 subsections (1) and (2) and section 4 subsections (2) and (4) as amended by the BMLFUW Administrative Reform Act, Federal Law Gazette I No. 58/2017, shall enter into force at the end of the day on which they are promulgated; at the same time section 4 subsection (3) and section 5, including the heading, shall cease to be in force.

Attachment 1

Greenhouse gas emission ceilings by sector for the
commitment period 2008 to 2012
in million metric tons of carbon dioxide equivalent
(calculated according to the revised 1996 IPCC Guidelines for National
Greenhouse Gas Inventories).

Sector	Greenhouse gas emission ceilings 2008 until 2012
Space heating CRF sectors 1A4a, 1A4b and 1A4c	59,5
Energy application CRF sector 1A1	Non-emission trade: 8.9
Waste Management CRF sector 6	10,5
Traffic CRF sector 1A3	94,5
Industry and manufacturing CRF sectors 1A2 and 2A, 2B, 2C, 2D and 2G	Non-emission trade: 18.4
'Fluorinated gases CRF sectors 2E and 2F	7,0
Other emissions CRF sectors 1A5, 1B and 3	4,5
Agriculture CRF sector 4	35,5

Enclosure 2

Annual greenhouse gas emission ceilings by sector for the commitment period 2013 to 2020
in million metric tons of carbon dioxide equivalent
(calculated according to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories).

Sector	2013	2014	2015	2016	2017	2018	2019	2020
Waste management CRF sectors 1A1a - other fuels; and 6	3,1	3,0	3,0	2,9	2,9	2,8	2,8	2,7
Energy and Industry (non-emission trade) CRF sectors 1A1 (less 1A1a - other fuels), 1A2, 1A3e, 1B, 2A, 2B, 2C, 2D, 2G and 3	7,0	6,9	6,9	6,8	6,7	6,6	6,6	6,5
Fluorinated gases CRF Sectors 2E and 2F	2,2	2,2	2,2	2,2	2,1	2,1	2,1	2,1
Building CRF sectors 1A4a and 1A4b	10,0	9,7	9,4	9,1	8,8	8,5	8,2	7,9
Agriculture CRF sectors 1A4c and 4	8,0	8,0	8,0	7,9	7,9	7,9	7,9	7,9
Traffic CRF-Sectors 1A3a (less CO ₂), 1A3b, 1A3c, 1A3d and 1A5	22,3	22,3	22,2	22,1	22,0	21,9	21,8	21,7
Total-sum	52,6	52,1	51,5	51,0	50,4	49,9	49,4	48,8"

III. Application submission and preliminary proceedings

1. The applicants are a group of children living in Austria with ös- 4
The applicants are Austrian citizens who have not yet reached the age of 18. The applicants were particularly concerned that, due to the failure to reduce greenhouse gas emissions in the present, they would have to live in a future in which they would have to fear for their health, their safety, the possibility of freely shaping their living conditions or their educational and professional opportunities, in short, for their children's well-being. Against the background of the immense pressure to act in this area, a de facto ineffective climate protection law would have effects that would reach into the constitutional sphere of the applicants and would already violate it at present.

1.1. With regard to the admissibility of the application, the applicants state in summary con- 5
the following:

1.1.1. On the subject of the audit:

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The core of the challenge is the mere obligation to negotiate and the temporal (with 7
expiry of the year 2020). The mere obligation to negotiate is standardized in Sec. 3 (2), first sentence, KSG; therefore, the main application requests the repeal of the wording "negotiations shall take place". § Sec. 3 (2) second, fourth and seventh sentence KSG were related to this; the wording "in the negotiations" in Sec. 3 (2) second sentence KSG, the wording "to conduct negotiations" in Sec. 3 (2) fourth sentence KSG and the wording "further" in Sec. 3 (2) seventh sentence KSG were therefore also challenged. With regard to § 3 para. 2 seventh sentence KSG, it had to be noted that the word "further" referred to the general obligation to negotiate, which had to be distinguished from the negotiation for setting emergency measures. The unconstitutionality of Section 3(2), first sentence, KSG was therefore exclusively inseparable from the word "further". The contested Section 3(2), fifth and sixth sentences, KSG would, on the one hand, be related to the obligation to negotiate provided for in Section 3(2), first sentence, KSG and, on the other hand, would standardize the exercise of the same in time-limited periods of obligation. The core of the proposal is also a retrospective basis for action in the event that GHG ceilings are exceeded and the related

negotiation and setting of emergency measures. Therefore, the wording "on the basis of an evaluation of the measures taken" in Section 3 (2), seventh sentence, KSG was also challenged.

With regard to the contingent application, the applicants also state that, in extension of the ⁸

In addition, the wording "shall be determined in accordance with the Annexes" in Article 3(1), first sentence, of the Climate Protection Act and the wording "the maximum quantities determined in accordance with Article 3(1)" in Article 6 of the Climate Protection Act were also challenged in the main application. § Section 3(1), first sentence, KSG stipulates that the basis for negotiating climate protection measures is exclusively the maximum GHG quantities specified in the annexes and thus limits the extent of the obligation. § Sec. 6 first sentence KSG refers directly to this basis and is inseparably connected with this provision. Furthermore, this wording is itself unconstitutional due to the reference to an unconstitutional, declarative statement on the determination of GHG ceilings in the annexes to the Climate Protection Act.

1.1.2. On the legal concern of the applicants with regard to the main an-
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§ Section 3 (2) of the KSG affects the applicants in their constitutionally protected right of ¹⁰

Article 1, first sentence, of the Federal Constitutional Law on the Rights of Children, Federal Law Gazette I 4/2011, (hereinafter: BVG on the Rights of Children), in their right to safeguard the best interests of the child in the form of the individual rights to protection and care, to the best possible development and to the safeguarding of their interests, in particular from the point of view of intergenerational justice. 1, second sentence, of the Federal Constitutional Law on the Rights of Children, and in their constitutionally guaranteed right to priority consideration of the best interests of the child in all measures affecting them, and in their constitutionally guaranteed right to equality before the law under both Article 7 of the Federal Constitutional Law and Article 2 of the Constitutional Law.

Article 1 of the Federal Constitutional Law on the Rights of Children confers on children a constitutional right ¹¹

The Federal Court of Justice of the Federal Republic of Germany has the right to

guarantee the best interests of the child. In any case, this right includes the right to protection and care, to the best possible development and fulfillment, and to the protection of the interests of children, in each case with special consideration of intergenerational justice. The subjective

The right to safeguard the best interests of the child, as a right guaranteed by constitutional law, is subject to the review competence of the Constitutional Court. Article 1 of the Federal Constitutional Law on the Rights of Children standardizes a genuine duty of protection guaranteed by the constitution, which is primarily directed towards safeguarding the best interests of the child. Against the background of the intergenerational justice expressly mentioned in Article 1 of the Federal Constitutional Law on the Rights of Children, it is to be noted that the safeguarding of the best interests of the child constitutes a continuous state obligation to take all necessary measures in order to prevent foreseeable impairments of the best interests of the child in the best possible way. The protection of fundamental rights conveyed by Article 1 of the Federal Constitutional Law on the Rights of Children is "anticipatory", since future impairments of the best interests of the child must also be included in the assessment of the current violation of fundamental rights. An omission or a partial omission of the primary duty to protect could also constitute a violation of the subjectively guaranteed rights. This is of particular importance in situations such as the present one, in which the future best interests of the child can only be safeguarded by continuous actions in the present - namely by stopping the irreversible emission of GHGs.

If the state fails to take effective climate protection measures, or ¹² if he takes manifestly inadequate (sham) measures and if, as a result, the best interests of the child are currently impaired or, with a probability bordering on certainty, will be impaired in the future, he violates the duty to protect pursuant to Article 1 of the Federal Constitutional Law on the Rights of Children and violates the constitutionally guaranteed rights of the applicants.

With the subjective rights guaranteed by Art. 1 BVG on the rights of children ¹³ rights are comparable to the "rights of the child" regulated in Art. 24 GRC. The Climate Protection Act serves the implementation of Union law. Both the wording of § 2 first sentence, § 3 para. 1 first sentence, para. 2 seventh sentence and § 7 first sentence of the Climate Protection Act as well as the legislative material pertaining to the Climate Protection Act explicitly state that the Climate Protection Act aims at the coordinated implementation of Austria's GHG reduction obligations under international and EU law by enabling effective climate protection measures. The coordinated sharing of GHG reduction obligations and burdens between the federal government and the provinces is

imperative for effective implementation, since GHG inputs and outputs are not shared by the federal government and the provinces.

savings to the necessary extent could only be achieved by including all areas of competence. Article 24 (1) CFR gives rise to a genuine duty of the state to protect, which is complemented by a subjective right of children to be protected as best as possible by active acts of the state against foreseeable or already materializing dangerous situations which are likely to impair their well-being.

The obligation to ensure the best interests of the child in a manner that is fair to all generations is supported by ¹⁴

furthermore by § 1 of the Federal Constitutional Law on Sustainability, Animal Protection, Comprehensive Environmental Protection, Securing Water and Food Supply and Research, Federal Law Gazette I 111/2013, as amended by Federal Law Gazette I 82/2019 (hereinafter: BVG Sustainability), which proclaims as a state objective a constitutional commitment "to the principle of sustainability in the use of natural resources in order to ensure the best possible quality of life for future generations as well". The term "intergenerational justice" is to be understood at least as the distributive justice concerning the available (material) resources, the securing of (over-)life chances as well as the preservation or improvement of the quality of life for younger and following generations. The maximum GHG budget that Austria could emit to meet the Paris climate targets - with a probability of 66% - is only available to a very limited extent (280 MtCO_{2eq}). If the current level of GHG emissions is maintained, it will be completely used up by 2025. The remaining GHG budget of Austria is thus to be regarded as an extremely limited available resource in terms of

§ Section 1 of the Federal Sustainability Act (BVG). Thus, according to § 1 of the Federal Law on Sustainability, there is an important constitutionally guaranteed interest in the greatest possible reduction of the nationwide GHG emissions, which must be taken into account when interpreting the rights of the applicants according to Article 1 of the Federal Law on the Rights of Children. Section 3 of the Federal Constitutional Law on Sustainability is also linked to this, which calls for the "preservation of the natural environment as the basis of human life" as a state objective of comprehensive environmental protection.

Similarly, the Union objective provision of Article 37 CFR also contains ob-

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The Federal Constitutional Court has no legal or constitutional mandate in the field of environmental protection. There are also legal areas determined by Union law in which the

the duty to pay particular attention to the generation-appropriate use of natural resources and to take this into account as a fundamental public interest in weighing decisions.

The German Federal Constitutional Court, in its "Climate Decision" of ¹⁶

The German Federal Constitutional Court stated in its decision of March 24, 2021, "that one generation must not be allowed to consume large parts of the CO₂ budget under a comparatively mild reduction burden if this would at the same time leave future generations with a radical reduction burden - described by the complainants as 'full braking' - and expose their lives to severe losses of freedom." Although the German Federal Constitutional Court had examined the intertemporal distribution of burdens in connection with the examination of interventions in civil liberties that would become necessary in the future, a comparable understanding under the aspect of intergenerational justice was also to be taken as a basis for the duties to protect pursuant to Article 1 of the Federal Constitutional Law on the Rights of Children and Article 24 (1) of the Basic Law, as well as for the objective of the generation-appropriate conservation of resources within the meaning of § 1 of the Federal Constitutional Law on Sustainability and Article 37 of the Basic Law. The constitutionally guaranteed rights of the applicants pursuant to Article 1 of the Federal Constitutional Law on the Rights of Children in conjunction with Sections 1 and 3 of the Federal Constitutional Law on Sustainability or Article 24 (1) of the Basic Law in conjunction with Article 37 of the Basic Law would be affected in all those cases in which the state creates (a system of) legal norms which - e.g. due to the subject matter of the regulations, the structure of the regulations or the consequences of the regulations - would (directly) affect the best interests of the child or would serve to avert concrete dangers which (could) affect the best interests of the child.

The purpose of the Climate Protection Act, he said, is to effectively combat cli- ¹⁷ macro crisis. This should be ensured by enabling a rapid and significant reduction of GHG emissions and creating a basis for implementing the most effective climate protection measures possible in Austria. The reference value stipulated in the Paris Climate Agreement, according to which an increase in global average temperatures should be limited to 1.5°C compared to the pre-industrial era, should be used as the target value, as the Climate Protection Act explicitly refers to existing obligations under international and European Union law. Since no

other crisis currently affects or threatens to affect the well-being of children as much as the climate crisis, the purpose of the Climate Protection Act is also to safeguard the well-being of children.

of children's livelihoods, the prevention of hazards, and the guarantee of a generationally fair distribution of the extremely limited resource "GHG emissions" and the associated burdens. The purpose of the Climate Protection Act is thus to safeguard the best interests of the child, in particular taking into account the aspect of intergenerational justice. Thus, the Climate Protection Act as well as the contested provisions on the "preparation of measures" are measures to safeguard the best interests of the child. The contested provisions of the Climate Protection Act directly affect children in their legal sphere.

The applicants would be violated in their constitutionally guaranteed ¹⁸

The applicants claim that the contested parts of § 3 para. 2 KSG would make it impossible to take effective climate protection measures and would violate the content of this legal duty to protect the state vis-à-vis the applicants. 2 KSG make the adoption of effective climate protection measures impossible and violate the constitutional duty of the state to protect the applicants. Sec. 3 para. 2 KSG does not stipulate any obligations of the norm addressees beyond the mere duty to conduct negotiations. Even in the context of the development of measures, which is to be negotiated exclusively, neither a concrete expected GHG savings potential of the individual measures is to be determined or stated, nor is a review to be carried out as to whether the individual measures would hinder each other or cancel each other out in their effectiveness. The obligation to negotiate, which is standardized several times in Sec. 3 (2) KSG, is thus, with regard to its ineffectiveness, equivalent to a qualified omission of state actors, which violates the active duty to act for the protection of the best interests of the child arising from Art. 1 BVG on the rights of children and Art. 24 (1) GRC. Furthermore, the contested wording of Sec. 3 (2) KSG exclusively refers to already past obligation periods, without specifying currently valid or future-oriented GHG ceilings. Without the specification of a stringent GHG reduction path, however, it would be impossible to fulfill the obligations under international and EU law in this area, since only the creation of such a basis for orientation could promote "the indispensable development and planning of appropriate technologies and practices" (cf. Section 3 (1) and (2) KSG). In addition, Section 3 (2) of the KSG stipulates an exclusively retrospective orientation.

Emergency measures regulation. Accordingly, emergency measures could only be taken on the basis of an evaluation of measures already taken.

As a result, he said, much of the money available at the time of the enactment of the Climate ¹⁹

GHG budget still available under the Climate Protection Act has already been used up. If the current GHG reduction path is maintained, Austria's share of the global GHG budget, which must be met in order to maintain a maximum increase in global average temperatures of 1.5°C with a probability of 66%, will already be used up in 2025. This would mean that applicants would be increasingly exposed to severe extreme weather events caused by the climate crisis, such as extended periods of drought, heavy rain, hail, and frequent flooding. In an equally drastic way, the climate crisis will have an impact on the social life and living conditions of the applicants if the climate targets are not met. In this context, the effects of mass migration due to the climate crisis and political unrest due to the effects of the climate crisis on the social, health and financial systems are to be mentioned in particular. Therefore, there is also no reason for restriction pursuant to Article 7 of the Federal Constitutional Law on the Rights of Children.

The uneven distribution of GHG reduction burdens also contradicts the Ge- ²⁰

The legislator is obliged to ensure the fair distribution of burdens in accordance with Article 7 of the Federal Constitution and Article 2 of the Constitutional Law, according to which the well-being of all may not be realized at the expense of a few and everyone who can contribute to the realization of the common good must be called upon to do so. In climate protection, the establishment of legal equality requires that the legislature regulate the adoption of effective climate protection measures in the Climate Protection Act in such a way that the burdens associated with the inevitably necessary GHG reduction measures (e.g. the restrictions on freedoms protected by fundamental rights) are distributed equally - and thus in an objective manner - among the individual holders of fundamental rights. § Section 3 (2) of the KSG therefore affects the legal sphere of the applicants and thus justifies their legal concern, since the provisions in their present form violate the requirement of a fair distribution of burdens, which arises from the right to equality before the law. Furthermore, the

provisions in their current form counteract the clear objective of the Climate Protection Act to enable the coordinated adoption of effective climate protection measures, which in itself contradicts the general requirement of objectivity.

The applicants were also adversely affected by the contested provisions in their 21
The German government is of the opinion that these individuals are affected by the general principle of equality. If the climate targets were not met, individuals with a higher remaining total lifespan would therefore have to accept a disproportionately greater burden due to both the consequences of the climate crisis and the countless restrictions on their freedom that would affect them due to the drastically increased need for GHG reduction, as a result of the fact that they would remain on earth longer than living people. The ineffectiveness of the contested wording of § 3 para. 2 KSG, which is tantamount to a qualified omission, leads to the fact that parts of the total population, which are to be treated as equal in legal terms, are treated unequally in an unobjective manner, since the younger generations are assigned the main part of the GHG reduction burden. § Section 3(2) KSG directly affects the applicants in law by violating their right to equality before the law (Art. 7 B-VG, Art. 2 StGG).

1.1.3. As to the direct concern of the applicants with respect to the main application: 22

The climate change law, he said, is a mandate and negotiation law whose goal is to 23
is to enable the coordinated implementation of effective climate protection measures. The primary addressees of the Climate Protection Act are the federal government and the federal ministers acting on its behalf. The applicants are not direct norm addressees. However, the Constitutional Court has repeatedly ruled that not only direct norm addressees can be directly affected by a statutory provision, but that a direct effect can also exist in all those cases in which a law itself, according to its purpose and content, interferes with the constitutionally guaranteed legal sphere of the applicants (VfSlg. 13.038/1992; 19.892/2014).

The Climate Protection Act is not a self-binding law with aus- 24
finally internal character. The measures envisaged under § 2 KSG should be

The Climate Protection Act is not subject to any simplified definitional requirements. For this reason, the Climate Protection Act is also not subject to any simplified definitional requirements.

The Climate Protection Act serves the purpose of "[e]nabling rapid and significant reductions ²⁵

emissions of greenhouse gases" in order to "at least limit further global warming" (cf. Explanatory Notes to the RV des Klimaschutzgesetzes, 1255 BlgNR 24. GP, 2 f.). The materials would clearly refer to the effects of the climate crisis on fundamental rights. The Climate Protection Act serves both to avert danger and to implement the state's duty to protect within the meaning of Article 1 of the Federal Constitutional Law on the Rights of Children. According to its objective and purpose, the Climate Protection Act is to be regarded as a direct, simple-law implementation of the genuine duty to protect resulting from Article 1 of the Federal Constitutional Law on the Rights of Children. Likewise, the Climate Protection Act is to be qualified as the implementation of the principle of the generation-appropriate use of resources enshrined in Article 1 of the Federal Constitutional Law on the Rights of Children in conjunction with Sections 1 and 3 of the Federal Constitutional Law on Sustainability.

However, the content of Section 3 (2) KSG does not correspond to the purpose of the Climate Protection ²⁶

Act. Section 3 (2) of the Climate Protection Act merely establishes an obligation of the federal ministers as addressees of the act to negotiate climate protection measures. Neither does Section 3 (2) of the Climate Protection Act stipulate an actual obligation to take effective measures, nor does it define parameters with regard to the results to be achieved. There is no obligation to evaluate the negotiated measures with regard to their real GHG reduction potential or possible countermeasures. In the past, this had resulted in the publication of tables of measures within the meaning of section 3(2) seventh sentence of the KSG by the competent federal ministers, but the list published for the period 2019 and 2020 contained, for example, 151 individual measures, of which only 16 had been assigned a numerically determined GHG reduction potential. No information was provided regarding the remaining 135 measures. In the programs of measures preceding this table for the period 2013 and 2014 as well as for the period 2015 to 2018, no GHG reduction potentials of the listed measures had been specified at all.

Furthermore, Section 3 (2) KSG in its current form refers exclusively to ²⁷ GHG reduction commitment periods in the past. Since the beginning of 2021, there had been no negotiation and no listing of climate protection measures or targets. Therefore, the challenged parts of Section 3(2) of the KSG would directly affect the applicants in law, as the provisions would prevent their right to the protection of the best interests of the child and thus their claims to protection from the dangers associated with the climate crisis and to the use of the resource "GHG emissions" in a manner that is compatible with the generations. Likewise, the direct concern is supported by the reference of § 3 para. 2 KSG to already past commitment periods, since currently no coordinated measures are taken on the basis of the Climate Protection Act. The petitioners' rights were directly affected by the violation of the state's genuine duty to protect them. In this context, it must also be taken into account that due to the imminent danger of climatic tipping points, "which, if exceeded, could lead to abrupt, serious and irreversible changes" in the climate system, climate protection measures safeguarding the best interests of the child must be taken as early as possible.

In this context, the case law of the Court of Justice of the Eu- ²⁸ European Union (ECJ 25.7.2008, C-237/07, *Janecek*), according to which rights directly guaranteed under European Union law would also necessarily require national possibilities for their assertion.

§ Section 3(2) of the KSG infringes the applicants' rights on the basis of the limited obligation ²⁹

The Federal Constitutional Court has ruled that the decision of the Federal Constitutional Court directly infringes the constitutionally guaranteed rights to the protection of the best interests of the child within the meaning of Article 1 of the Federal Constitutional Law on the Rights of Children, since this de facto makes it impossible to take effective climate protection measures. For this effect, no further concretizing act of execution was required.

The applicants claim that the contested wording of Sec. 3 (2) of the KSG ³⁰ The provision would also have a direct adverse effect on their legal sphere in that it would impose on them both the bulk of the unavoidably necessary GHG reduction burdens, together with the associated future restrictions on freedom, and the burdens associated with the disastrous consequences of the increasingly escalating climate crisis. This effect occurs

and is already being felt by the applicants in various forms.

1.1.4. On the current concern of the applicants with regard to the main an-
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The state violated its existing genuine ³² duty to protect, whereby the applicants' right to the protection of the best interests of the child is currently being violated. § Section 3 (2) KSG in its current version has the effect that the state does not or cannot comply with its [duty to protect] pursuant to Article 1 BVG on the rights of children in conjunction with Sections 1 and 3 BVG Sustainability. This also applies in a comparable manner to the violation of the subjective rights to the protection of the best interests of the child to which the applicants are entitled under Article 24 (1) GRC in conjunction with Article 37 GRC. Likewise, the applicants' right to equality before the law pursuant to Article 7 of the Federal Constitution and Article 2 of the Constitutional Law is currently affected by Article 3(2) of the KSG as they belong to the delimitable group of the younger generations. The contested provision already has the current effect that the burdens associated with the climate crisis, its consequences and the fight against it have to be borne almost entirely by younger generations, which also has an impact on their well-being and their development opportunities at the time of the application. In addition, they would also be burdened with the future burden, which would already impair and limit them in their future planning and shaping.

1.1.5. There is no possibility for the applicants to raise their concerns in the framework of
the

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The court may also refer the matter to the Constitutional Court by other "reasonable" means.

1.1.6. On the direct legal and current concern of the applicants
with regard to the contingent motion:

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Due to the use of the wording "shall be determined in accordance with the annexes-
The Climate Protection Act stipulates that only the maximum GHG quantities
specified in the installations are binding under the law. Despite the direct
applicability of the GHG reduction obligations under EU law at the national level,
Section 3 (1) of the Climate Protection Act is, however, limited to the setting of
GHG ceilings.

in its installations. This leads to the fact that even the mere obligation to negotiate according to § 3 para. 2 KSG in its current version only exists in connection with the specified reduction targets of the annexes. The exclusively declarative wording (arg. "shall be determined in accordance with the installations") of § 3 para 1 first sentence KSG cannot be interpreted as a direct legal obligation to actually determine GHG ceilings or to update them. Therefore, as long as no or no current GHG ceilings are specified in the Annexes to the Climate Protection Act pursuant to Section 3(1) of the Climate Protection Act, no climate protection negotiations within the meaning of Section 3(2) of the Climate Protection Act are to be conducted or measures are to be specified. The declarative reference to the determination of GHG ceilings in the annexes to the Climate Protection Act in § 3 para. 1 first sentence KSG thus leads to the fact that even the negotiation obligation of § 3 para. 2 KSG, which is in itself inadequately designed, has not been exercised since the end of the year 2020. Since Section 3(1) of the Act prevents the ongoing adoption of effective climate protection measures on the basis of updated GHG ceilings, the petitioners are also legally, directly and currently affected in this context.

1.2. On the merits, the applicants bring to the essence summarized ³⁶
The following:

1.2.1. The unconstitutionality of the challenged parts of the climate protection law ³⁷
The applicants allege in particular a violation of their constitutionally guaranteed rights to the protection of the best interests of the child pursuant to Article 1 of the Federal Constitutional Law on the Rights of Children, which is composed in particular of the individual rights to protection, care, best possible development and protection of the interests of children and must be interpreted as a whole with particular regard to the aspect of generational justice. The applicants' subjective right to the protection of the best interests of the child under Article 24.1 of the Basic Law was also violated.

1.2.2. Moreover, the petitioners would be violating their constitutionally- ³⁸
The Constitutional Court has not infringed the right to equality before the law pursuant to Article 7 of the Federal Constitution and Article 2 of the Constitutional Law in the form of the general principle of equality, the general principle of objectivity that can be derived from it and the principle of fair burden sharing.

1.2.3. § Section 3 (2) of the KSG, in its current form, also contradicts ³⁹ the right of applicants to appropriate participation and consideration of their views in all matters concerning them, in accordance with Article 4 of the Federal Constitutional Law on the Rights of Children.

1.2.4. Moreover, the provisions of §§ 1 and 3 BVG Sustainability and ⁴⁰ Article 37 GRC is of fundamental relevance for the assessment of the unconstitutionality of the challenged provisions. Although these would not constitute subjective public rights to be directly asserted by the applicants, the contested provisions of the Climate Protection Act would also violate these (target) provisions, which is why they had to be included in the assessment of the unconstitutionality of the contested provisions. Moreover, Sections 1 and 3 of the Federal Constitutional Law on Sustainability would play a special role in the interpretation of the subjective rights under Article 1 of the Federal Constitutional Law on the Rights of Children, as they would also focus on the principle of sustainability and intergenerational justice in the use of natural resources as well as on the preservation of the environment as the basis of life, and would thus establish the use of resources in a way that is appropriate to the generations as a special public interest with constitutional rank. In the context of climate protection, this definition of a state objective is of particular importance in the interpretation of (fundamental) legal norms. The situation was similar with regard to Article 24 (1) CFR, which had to be interpreted by applying Article 37 CFR.

2. The Federal Government did not submit any comments.

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IV. Admissibility

1. Pursuant to Art. 140 par. 1 fig. 1 lit. c B-VG, the Constitutional Court shall rule on ⁴² Unconstitutionality of laws at the request of a person who claims to have his rights directly violated by unconstitutionality, if the law has become effective for that person without rendering a judicial decision or issuing a notice.

2. A prerequisite for the right to file an application pursuant to Art. 140 par. 1 fig. 1 lit. c B-VG is ⁴³

On the one hand, that the applicant claims to have been directly affected by the contested

The applicant must be able to prove that his or her rights have been violated by the law - with regard to its unconstitutionality - and that the law has actually become effective for the applicant without a court decision or without the issuance of an official notice. The basic prerequisite for the legality of the application is therefore that the law adversely affects the applicant's legal sphere and - in the case of its unconstitutionality - violates it.

It is furthermore necessary that the law itself actually

interferes directly with the legal sphere of the applicant. Such an encroachment is only to be assumed if it is clearly determined by the law itself in terms of its nature and extent, if it affects the (legally protected) interests of the applicant not merely potentially but actually impaired and if the applicant has no other reasonable means of defending against the - allegedly - unlawful interference (VfSlg. 11.868/1988, 15.632/1999, 16.616/2002, 16.891/2003).

In this respect, the Constitutional Court shall proceed on the basis of the submission of the application and le- 45

It is essential to examine whether the effects referred to by the applicant are such as required by Article 140 para. 1 subpara. 1 lit. c B-VG as a prerequisite for the legitimation of the application (cf. e.g. VfSlg. 11,730/1988, 15,863/2000, 16,088/2001, 16,120/2001).

3. The application proves to be inadmissible due to the too narrowly chosen scope of challenge 46
as inadmissible.

3.1. The limits of the repeal of a 47 to be reviewed for constitutionality

As the Constitutional Court has repeatedly stated both for ex officio and for review proceedings initiated upon application (VfSlg. 13.965/1994, 16.542/2002, 16.911/2003), provisions of law must be drawn in such a way that, on the one hand, the remaining part of the law is not completely changed in content and, on the other hand, that the provisions inseparably connected with the provision to be repealed are also covered.

In accordance with this basic position, the Constitutional Court has confirmed the legal opinion of the Federal Constitutional Court.

The Supreme Court has developed the opinion that the scope of the challenge to the

The applicant shall challenge all those norms which form an inseparable unit for the assessment of the possible unconstitutionality of the legal situation (cf. VfSlg. 16.212/2001, 16.365/2001, 18.142/2007, 19.496/2011, 20.154/2017). The applicant shall challenge all those norms which form an inseparable unit for the assessment of the possible unconstitutionality of the legal situation. It is then up to the Constitutional Court to decide how such unconstitutionality - should the Constitutional Court share the applicant's view - is to be remedied.

- can be eliminated (VfSlg. 16.756/2002, 19.496/2011, 19.684/2012, 19.903/2014; VfGH 10.3.2015, G 201/2014). The Constitutional Court is precluded from giving the norm a completely changed content by repealing mere parts, which is no longer comprehensible to the legislator at all, because this would in effect be an act of positive legislation (VfSlg. 13.915/1994; VfGH 14.3.2017, G 14/2016).

From the point of view of a non-separable entity under consideration, preliminary ⁴⁹
In addition, it follows from the provisions of the Constitution that a procedural impediment also exists if, due to the binding nature of the application filed, a provision would be repealed in such an isolated manner that difficulties would arise with regard to the applicability of the provisions remaining in the body of law, namely in such a way that the elimination of the contested (parts of a) provision would render the remaining provision incomprehensible or even inapplicable. The latter is the case if it is no longer possible to assess with certainty whether a case subject to the remaining provision exists (VfSlg. 16.869/2003
mwN).

3.2. In their main application, the applicants seek the annulment of certain ⁵⁰
parts of the sentence or sentences of Section 3 (2) of the KSG. It is requested that the word and character string "negotiations shall take place" be deleted. in section 3(2), first sentence, KSG, the phrase "in the negotiations" in section 3(2), second sentence, KSG, the phrase "to conduct negotiations" in section 3(2), fourth sentence, KSG, section 3(2), fifth and sixth sentences, KSG, in their entirety, and the phrase "on the basis of an evaluation of the measures taken" and the phrase "further" in section 3(2), seventh sentence, KSG.

The concerns of the petitioners relate to the provisions of section 3 of the KSG. Mechanism for the development of measures. The contested word sequences

would standardize a time-limited commitment period, a pure negotiation obligation regarding the development of effective GHG reduction measures, and exclusively retrospectively oriented emergency measures. The in § The obligation to negotiate stipulated in Section 3 (2) sixth sentence of the Climate Protection Act is based on a limited commitment period in the past. This prevents new negotiations on the development of effective climate protection measures. By focusing on the evaluation of measures already taken in connection with the adoption of further (emergency) measures, no future-oriented measures are possible. On the one hand, this would violate the constitutionally guaranteed duty of the state to protect children's rights pursuant to Article 1 of the Federal Constitutional Law and Article 24 of the Basic Law, and on the other hand, it would violate the constitutionally guaranteed right to equality before the law pursuant to Article 7 of the Federal Constitutional Law and Article 2 of the Basic Law.

Petitioners fail to recognize that this asserted unconstitutionality is not 52 could be eliminated by merely repealing individual wordings in Section 3 (2) KSG. This already follows from the fact that the obligation to negotiate for the development of measures cannot be seen in isolation from the determination of the maximum quantities in the annexes. For example, the initiation of negotiations in Section 3 (2) fifth sentence KSG is explicitly linked to the existence of a proposal pursuant to Section 3 (1) KSG.

Moreover, the requested repeal would constitute an impermissible act of positive gee- 53 The Constitutional Court would have to repeal the contested wording of the Climate Protection Act, as this would mean that the content of the Act would be incompatible with that of the legislator. Pursuant to § 2 of the Climate Protection Act, the Climate Protection Act aims at climate protection measures in the area of the Federation and the Länder (cf. also the explanatory memorandum to the Climate Protection Act, 1255 BlgNR 24. GP, 3). § Section 3(2), fourth sentence, of the Climate Protection Act provides that the responsibility for conducting negotiations for the development of measures in the respective sectors is incumbent on the federal ministers responsible in each case by analogy with the Climate Strategies 2002 and 2007, and subsidiarily on the federal ministers responsible under the Federal Ministries Act 1986 (BMG). By merely deleting the phrase "to conduct negotiations" in § Section 3 (2) fourth sentence KSG would, instead of the responsibility for

conducting negotiations, make the responsibility for drafting measures insge-

all of the above. However, the legislator cannot be expected to define the responsibility of the competent federal ministers for the development of all climate protection measures within the competence of the federal government and the Länder and not merely for the conduct of negotiations, if only on the basis of the distribution of competences pursuant to Art. 10 et seq. B-VG, the legislature cannot be expected to do so.

3.3. The contingent motion also proves to be too narrow, with which additionally⁵⁴ the word and character strings "shall be determined in accordance with the annexes. The maximum amounts" in § 3 para. 1 KSG and "determined in accordance with § 3 para. 1" in § 6 KSG are contested. It cannot be ruled out that - if a possible unconstitutionality were to be established - it could not be eliminated merely by repealing certain word and character sequences in § 3 KSG.

3.4. For this reason alone, the main motion and the contingent motion are therefore 55 to be rejected as inadmissible.

V. Result

1. The application is rejected. 56
2. Pursuant to Sec. 19 (4) of the Constitutional Court Act, this decision could be taken in closed session. 57
be grasped.

Vienna, June 27, 2023

The President:

DDr. GRABENWARTER

Secretary: SELEM,
LL.M.