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Constitutional complaint 2024
Greenpeace e.V. and Germanwatch e.V.
Federal Climate Protection Act 2024:
Ambition and control architecture unconstitutional

Bundesverfassungsgericht case number: 1 BvR 2113/24

Summary

1.
Three years after the decision of the Federal Constitutional Court (BVerfG) of March 24, 2021, 1 BvR 2656/18 i.a. (in the version of the Climate Decision), both the rights and obligations established there, and the underlying human problem of climate change seem more important than ever considering its serious consequences. The European Court of Human Rights (ECtHR) confirmed this in April 2024: The legislator has extensive climate protection obligations at the regulatory and implementation level. Therefore, the complainants in the climate resolution (BVerfG, decision of 24.03.2021, ref. 1 BvR 288/20 - Neubauer, Backsen et al.) together with Greenpeace e.V. and Germanwatch e.V. and over 50.000 people from Germany allege once again that their fundamental rights have been violated.

2.
The provisions of the Federal Climate Protection Act (Klimaschutzgesetz - KSG) in the version of the "Second Act to Amend the Federal Climate Protection Act" (**KSG Amendment 2024**), which came into force on 17.07.2024, are being challenged. The amendments made by the KSG Amendment 2024 **significantly weaken the law and its enforcement** and postpone the reduction of greenhouse gas emissions into the future.

The core of the new regulations is the conversion of the control architecture by abolishing the sector targets in Section 4 in conjunction with Annex 2 KSG (old version) and the sector-related follow-up control through immediate programs (§ 8 KSG old version). Now, based on projections (Section 5a KSG new version), the follow-up control is based solely on whether the cumulative emissions permitted in the overall period from 2021 to 2030 (or later from 2031 to 2040) are exceeded (Section 4 (1), Section 8 KSG new version). The readjustment mechanism is also incomplete and considers the period after 2030 far too late.

3.
The law permits emission levels that far exceed the remaining CO_2 budget to which the Federal Republic of Germany is (still) entitled. The German Advisory Council on the Environment (Sachverständigenrat für Umweltfragen, SRU) derives - expressly retaining its calculation method - a residual budget of 3.9 Gt CO_2 for the temperature threshold used by the Federal Constitutional Court in the climate decision (1.75 °C with 67 % probability assuming a global *per capita* distribution) - this would already be used up by 2033 due to the current KSG. According to the SRU's current calculations, the German budget for 1.5 °C is already used up today - even if only a 50 % probability of compliance with this threshold is assumed.

4.
The (non-constitutional) legislatively presupposed CO2 budget or the **climate targets as total quantities will not be achieved**. According to the Federal Environment Agency's 2024 projection data, compliance with the overall budget by 2030 under the KSG seemed achievable again, but the Expert Council for Climate Issues continues to assume (as it has for years) that the target will not be met. The reason for the unexpectedly sharp decline in emissions in 2023 was primarily external effects - in particular the economic crisis – rather than effective climate protection measures. After 2030, all projections continue to assume a significant shortfall from the target. Also, with regard to the European targets from the Climate Protection Regulation (ESR targets) a significant shortfall is expected.

Therefore, it is obvious that a coherent, effective concept for implementation and enforcement is required to avoid the "full brake" and ensure liberties - the challenged regulations have the opposite effect.

5.
The constitutional complaint is based on the constitutional requirements in accordance with the **climate resolution** and the subsequent case law of the Federal Constitutional Court: The German legislator must set a framework that is compatible with the temperature targets of the Paris Agreement and introduce the necessary emission reductions in a timely manner to avoid a later "full brake" with serious restrictions on civil liberties. The climate protection requirement of Article 20a of the Basic Law (Grundgesetz -GG) and the goal of achieving climate neutrality

contained therein will gain in importance in all decisions made by the state as climate change progresses. To ensure that individual liberties are preserved in the future, emission reductions must be introduced precociously, and the burden of reduction must be distributed fairly across the generations.

6.
The **regulations challenged** by the constitutional complaint concern

- the lack of adjustment of the climate protection targets and total annual emission quantities to the remaining CO2 budget pursuant to Article 20a GG (Sections 3 (1), 4 (1) in conjunction with Annexes 2 to 3 KSG)

- the lack of offsetting of missed targets for the period after 2040 and the authorization of the federal government to change total annual emission quantities without further specifications

- the abolition of sector targets and emergency programs in favour of a "cross-sectoral and multi-year accounts"

- the weakened readjustment, which in particular requires a projected excess of the total annual emission volumes in two consecutive years

- and the obligation to collect projection data and to make adjustments for the period after 2030 only from 2029/2030 and a complete lack of projections and adjustments after 2040.

The complaint alleges a violation of the complainant's liberty, which is intertemporally protected under Art. 2 para. 1 GG in conjunction with Art. 20a GG. As well as violations of the fundamental right to life and physical integrity (Art. 2 para. 2 sentence 1 GG in conjunction with Art. 20a GG).

7.
First, a **violation of the climate protection requirement** under Article 20a GG is presented for various reasons**:**

The climate protection targets (Section 3 (1) KSG) as well as the annual reduction targets and the total annual emissions (Section 4 (1), Annexes 2 to 3 KSG) are not ambitious enough to meet the temperature targets of the Paris Agreement and thus the requirements of the climate protection requirement (Art. 20a GG). As a result, the quantities permitted for emission in Germany are too high (**insufficient ambition level**).

The statutory provisions in Section 4 (2) and (3) KSG also mean that the law does not effectively limit the permitted emission levels (**insufficient safeguarding of**

the budget). Missed targets from previous years are only taken into account until 2040 and then simply disappear ("black hole"). In addition, the Federal Government can change annual emission quantities by statutory order without any further substantive limit. Both violate the climate protection requirement under Article 20a GG.
Finally, the amendment to the KSG 2024 violates the climate protection requirement under Art. 20a GG because it represents an unjustifiable **"ecological step backwards"**. The shortcomings criticized in the constitutional complaint weaken the level of climate protection in Germany without any apparent justification.

8.
By **abolishing the binding sectoral targets and the sectoral follow-up control**, the new KSG deliberately eliminates the pressure to transform and thus shifts reduction efforts and burdens into the future. This violates the civil liberties of the complainants, which serve as an individual right to intertemporally safeguard against the one-sided shifting of the greenhouse gas reduction burden imposed by Article 20a of the Basic Law into the future.

The readjustment mechanism of Section 8 KSG (old version) was intuitive and consistent: if an individual sector had reduced less than required by law, it had to make up for exactly the same amount of reductions. There was therefore considerable pressure to transform if a sector failed to meet its targets. This applied specifically to the buildings and transport sectors, which have consistently missed their sector targets since 2020 (buildings) and 2021 (transport). These exceedances of the permitted emission levels will be retroactively remedied by the amendment to the KSG. By automatically offsetting them against non-compulsory savings in other sectors the exceedances will be “legalized”. This at least factually increases emissions and **deliberately removes the pressure to transform from the "problem sectors"**. This is because the amendment hides the delay in transformation in some sectors behind the (largely crisis-related) successes of other sectors. This legally created possibility of "business as usual" in the problematic sectors structurally shifts the burden of reduction into the future, precisely where it will only be possible with a serious loss of freedom.

The abolition of sector-based control cannot be justified by an **alleged need for flexibility**. Even before the amendment, the federal government had the option of changing the annual emission volumes of the sectors in Annex 2 KSG (old version) in accordance with Section 4 (5) KSG (old version) and thus enabling the sectors to help each other out. However, this did not happen automatically but had to be specifically decided by the federal government - the "default setting" was transformation pressure.

9. The new KSG further weakens the control architecture due to the **incomplete design of the follow-up control mechanism**, which also structurally shifts reduction burdens into the future.

The mechanism pursuant to Section 8 (1) sentence 1 KSG only applies if **the target is missed twice**. A readjustment is only necessary if the cross-sector "total budget" is projected to be exceeded in two consecutive years in the years 2021 to 2030 inclusive. There is no apparent objective reason for this. The same applies to the exclusion of readjustment if a lawful readjustment program was already submitted in the previous year (Section 8 (1) sentence 2 KSG).

10.
The **readjustment for the period after 2030 comes too late and is completely absent after 2040**. This also shifts reduction burdens structurally and unjustifiably into the future.

In structural terms, the new KSG bases the subsequent control solely on the projections according to § 5a KSG. However, both the readjustment and the projections initially only relate to the period up to 2030. It is only in 2029 that the projections take a year-by- year view of the period from 2031 to 2040 (Section 5a Sentence 1 half-sentence 2 KSG) with readjustment for this period only taking place from 2030 (Section 8 (4) KSG). This means that the famous **"three monkeys"** are to a certain extent anchored in the readjustment mechanism: **nothing** will be **seen** or **heard** about the time after 2030 until 2029 (projections) and **nothing** will **be said** before 2030 (readjustment). According to the current projections, however, there is a risk of considerable shortfalls in targets after 2030 in particular, and thus a mitigation burden, which the law deliberately turns a blind eye to until the very end. The legally prepared consequence is that the timely introduction of measures will be delayed and all of a sudden even tougher measures will have to be taken after 2030.

Specifications for the period after 2040 are completely **absent** from the new version of the law. In particular, neither year-specific projections nor a subsequent adjustment is provided for that timeframe. According to Section 5a Sentence 1 half-sentence 2 KSG as amended, projections after 2040 are only to be prepared for the year 2045. The retrospective adjustment mechanism pursuant to § Section 8 (4) KSG (new version) ends in 2040 without any further requirements for the period thereafter.

11.
Overall, these shortcomings have not been remedied by the legal framework at EU level or the implementation of EU law; despite its considerable further development since 2021, **EU climate protection law** is **no hammock**.

EU law does not guarantee the constitutionally required protection of climate and fundamental rights because it does not contain any binding interim targets after 2030 and does not specify a budget up to 2050. Although the emissions trading scheme for the energy and industry sectors (ETS I), which has been in force since

2003, allocates emissions certificates throughout Europe and thus limits the quantity of emissions, there are considerable uncertainties regarding the "budget" in detail. All other sectors have so far only been covered by the Climate Protection Ordinance (or Effort Sharing Regulation - ESR), which only sets quantitative targets up to a maximum of 2030 and then ends (currently, the quantity targets for the member states only extend to 2025 via the 2020/2126 ETS Regulation). Although the newly planned ETS II for transport and buildings provides for a further quantitative limit (although the details are also uncertain), around 25% of EU emissions will remain unregulated even after its introduction.

Even more so, EU law does not provide sufficient enforcement mechanisms that could even begin to remedy the shortcomings of the KSG described above.

12.
While delivering the constitutionally required reduction of greenhouse gases, the state is obligated to safeguard liberties intertemporally and to distribute opportunities for freedom proportionately across generations. The new KSG does not comply with this requirement and considerably worsens the legal situation with regard to compliance. The violation of the climate protection requirement and the intertemporal liberties means that constitutional complaint has merit and must be heard.

13.
Some of the complainants (complainants 7-9) also assert a **violation of duties to protect**, i.e. the right to protection from the consequences of climate change (health and life, Art. 2 para. 2 GG in conjunction with Art. 20a, Art. 20 para. 3 GG and Art. 25 sentence 1 GG and Art. 8 of the ECHR).

The violation of a duty to protect fundamental rights results firstly from the violation of the climate protection requirement (Art. 20a GG). In addition, it results from the application of the principles of ECHR case law. For compliance with Art. 8 ECHR, the latter requires both the definition of a Paris-compatible level of protection and reduction path as well as its monitoring and enforcement. For the reasons outlined above, neither of these are guaranteed by the new KSG. The standard for the violation of the duty to protect is also the same as that for the intertemporal violation of civil liberties.

The complainant associations (complainants 1 and 2) can assert the alleged violation of the duty to protect in accordance with the case law of the ECtHR.

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