

Justiciability of the Energy Strategy 2050 (Project SNF)



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Project → Overall Overview

- **Analysis of the legal instruments of the Energy Strategy 2050**
- **Governance**
- With a special focus on **justiciability**
- **Broad discussion with members of the Swiss Federal Supreme Court – what future cases do we expect?**
- Strong subsidisation → Legality of the foreseen funding system?
- Governmental supervision → Structure of control?
- New status of national interests for the production of renewable energies → Acceleration of procedures, changing in the courts' evaluations?

Structure and legality of the foreseen funding system

- → PhD Project 1 examines to what extent the subsidies are to be provided in accordance with the
 - Swiss Financial Constitution
 - National Administrative Law and
 - International legal obligations that Switzerland carries, especially towards the
 - EU
 - WTO
- Opportunities for the further measure packages?

Structure of governmental control and regulatory decisions

- The enhanced use of renewable energies foresees an intense **governmental supervision**
- Competences and tasks of the Swiss energy regulatory agencies
- **Technical supervision** on producers (planning, production and maintenance)
- Examination of **judicial authority** over decisions by regulatory agencies in the energy sector
- → **Reduction in the grounds of appeal**, limit the jurisdiction of the Federal Supreme Court to legal questions of fundamental importance?

Project 2 → Regulatory Decisions

- Art. 49 APA: No review of **adequacy** by the Federal Administrative Court if the ruling has been made by a regulatory body?
- Furthermore, when applying **vague legal terms**, the court would be bound by the regulator's interpretation unless that interpretation was "evidently wrong"
- → Are the regulators' decisions sufficiently legitimized and are the regulators independent and **impartial enough** to justify such exceptions to the courts' general authority?
- → Would such a limitation of the courts' authority be consistent with the **separation of powers** and the idea of sufficient "checks and balances"?
- → Draw the thin line between justiciable and non-justiciable question, ways to interpret the new laws

The use of renewable energy and its expansion are of **national interest**

- Natural Monuments of National Interest (BLN) appear in the law on the protection of nature and landscape (NHG)
- Renewable energy systems as well as pumped storage plants are **of national interest as soon as they reach a specific size** → might be equal or higher than the national interest in the sense of Art. 14 al. 2 of the law on the protection of nature and landscape (NHG)
- → Derogations of the status of the preserved undiminished inventories in the sense of Art. 5 NHG can be considered

Project 3 → National Interest

- **Potential Conflicts: Environmental and nature conservation,** organisations having less rights to object to permits
 - → Potential conflicts (e.g. the laws on environmental protection) and with international obligations (e.g. the Aarhus Convention)
- **Analysis of the legislative aim**
 - to create legal certainty to encourage investment
- → aim of the PhD-Project 3 is to find out how to apply **criteria to effectuate the weighing of interests without loss of the constitutional content** and with no breach of other laws