Recent Climate Change Litigation Before the European Court of Human Rights

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ABSTRACT

Climate change poses significant threats to human rights, as protected under the European Convention on Human Rights. The European Court of Human Rights acknowledges the unprecedented challenges that climate change cases present, highlighting the increasing need to address these issues concerning human rights violations. Recent climate case litigation before the European Court of Human Rights highlights key legal principles, including states' positive obligations to protect life and health from environmental harm, including climate change. The landmark case of *Verein Klimaseniorinnen Schweiz* marked the first instance where the European Court of Human Rights identified a human rights violation linked to climate change. This decision sets a significant precedent, influencing future lawsuits and environmental legislation. Although the judgment has limitations, particularly given Switzerland's unique regulatory context, it underscores the increasing role of climate litigation in shaping policy and public discourse, extending its impact beyond the courtroom.

Keywords: climate change, litigation, human rights, European Court of Human Rights, European Convention of Human Rights, environment

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Nedavne tožbe zaradi podnebnih sprememb pred Evropskim sodiščem za človekove pravice

POVZETEK

Podnebne spremembe predstavljajo resno grožnjo človekovim pravicam, ki jih varuje Evropska konvencija o človekovih pravicah. Evropsko sodišče za človekove pravice priznava brezprecedenčne izzive, ki jih prinašajo primeri, povezani s podnebnimi spremembami, in poudarja vedno večjo potrebo po obravnavi teh vprašanj v kontekstu kršitev človekovih pravic. Nedavne tožbe zaradi podnebnih sprememb pred Evropskim sodiščem za človekove pravice izpostavljajo ključna pravna načela, med drugim pozitivne obveznosti držav, da zaščitijo življenje in zdravje pred škodljivimi vplivi okolja, vključno s podnebnimi spremembami. Prelomna zadeva *Verein Klimaseniorinnen Schweiz* je pomenila prvi primer, v katerem je sodišče ugotovilo kršitev človekovih pravic, povezano s podnebnimi spremembami. Ta odločitev postavlja pomemben precedens, ki vpliva na prihodnje tožbe in okoljsko zakonodajo. Čeprav ima sodba določene omejitve, zlasti glede na specifični regulativni okvir Švice, poudarja vse večjo vlogo podnebnega pravosodja pri oblikovanju politik in javne razprave, s čimer presega okvir sodne dvorane.

Ključne besede: podnebne spremembe, pravdni postopki, človekove pravice, Evropsko sodišče za človekove pravice, Evropska konvencija o človekovih pravicah, okolje

1. Introduction

Climate change is one of the most pressing issues of our time. The resulting consequences for the environment, and its adverse effects on the living conditions of various human

communities and individuals, are complex and multiple. In recent times there has been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. There has also been a recognition that environmental degradation has created, and can create, serious and potentially irreversible adverse effects on the enjoyment of human rights. The anthropogenic climate change poses a serious current and future threat to the enjoyment of human rights guaranteed under the European Convention of Human Rights (hereinafter referred to as "Convention"). The current climate situation therefore involves compelling present-day conditions, confirmed by scientific knowledge, and the European Court of Human Rights (hereinafter referred to as "the Court") argued it cannot ignore it in its role as a judicial body tasked with the enforcement of human rights. The Court stated that climate change cases raise unprecedented issues (ECtHR *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 410, 413, 414, 431, 436).

The core of the relationship between the environment and human rights is the dependence of people on their relationship with the non-human world and human vulnerability to environmental change (Žatková, Paľuchová, 2024, p. 227). The adverse effects of climate change are threatening a range of human rights (Bodansky, Brunnée, Rajamani, 2017). Climate change impacts, directly and indirectly, an array of internationally guaranteed human rights (Understanding Human Rights and Climate Change, 2015, p. 1). It undermines the realisation of a broad range of internationally protected human rights: rights to health and even life; rights to food, water shelter and property; rights associated with livelihood and culture; with migration and resettlement; and with personal security in the event of conflict (Humphreys, 2010, p. 1). United Nations Special Rapporteurs on toxics and human rights, on human rights and the environment,

and the Independent Expert on the enjoyment of all human rights by older persons as the interveners in the case of *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (hereinafter referred to as "the case of *Verein KlimaSeniorinnen Schweiz*") stated that the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights (ECtHR *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 379, 451). Legal arguments can be made under the existing law about what countries must do, not simply policy arguments about what they should do (Bodansky, Brunnée, Rajamani, 2017, pp. 298-299).

There has been a significant increase in interest surrounding the topic of climate change and human rights in the last decades. That rapid increase in climate litigation has occurred around the world (Lavrysen, Bouquelle, 2023, p. 15). Litigators have begun to bring claims asserting that climate change is implicated in human rights violations, and the academic community has explored the theoretical and practical issues involved (Bodansky, Brunnée, Rajamani, 2017, pp. 296-297). The global expansion in climate litigation gives substance to the claims of a transnational climate justice movement that casts courts as important players in shaping multilevel climate governance (Peel, Lin, 2019, p. 681). Human rights tend to provide the legal and moral basis for litigants' and courts' arguments to hold governments accountable for climate harm (Rodríguez-Garavito, 2020, p. 40). Climate litigation is having an impact both within and beyond the courtroom (Setzer, Higham, 2023, p. 47). It has been increasingly used as a tool to influence policy outcomes and/or to change corporate and societal behaviour (Bouwer, Setzer, 2020, p. 3). Climate change litigation can focus on legislation, executive decisions, conduct, and the public values reflected in them (Preston, 2016, p. 14).

Applicants in climate change cases argue that the member state have violated some of the provisions of the Convention

when considered in light of the Paris Agreement. All cases rely on the respondent States' positive obligations concerning the right to life (Article 2 of the Convention) and the right to respect for private and family life (Article 8 of the Convention). The cases further make discrimination claims (Article 14 of the Convention), alleging that the characteristics of their group or their personal circumstances are such that they will suffer particularly from the impacts of climate change (Burger, Tigre, 2023, p. 34).

2. Recent climate change cases before the Court

Several cases raise questions about the relevance of human rights in the context of climate change. Three of the most important judgements of the Court in the field of Climate Change can be highlighted and the Court announced them on the same date 9 April 2024: *Duarte Agostinho and Others v. Portugal and 32 Others* (hereinafter referred to as "the case of *Duarte Agostinho*"), *Carême v. France* (hereinafter referred to as "the case of *Carême*") and the case of *Verein KlimaSeniorinnen Schweiz*. Most recently, in August 2025, the Court delivered its decision in the case of *Engels and Others v. Germany* (hereinafter referred to as "the case of *Engels*"). These cases marked a significant milestone in the environmental protection provided by the Court as a human rights body, but also a milestone in the growing field of climate litigation (Žatková, Paľuchová, 2024, pp. 228-229). Although all three cases raise questions about the relevance of human rights in the context of climate change, they are different, and they raise separate points of law even if these are novel and, to varying degrees, forced the Court to reconsider established doctrines (Pedersen, 2024). In the case of *Duarte Agostinho* the Court, in which six Portuguese youths filed a lawsuit against 33 states for failing to take sufficient action to address climate change, found the application in-

admissible. The applicants encountered major procedural obstacles. The Portuguese applicants were only within the jurisdiction of Portugal, and not the 32 other states and they did not exhaust domestic remedies in Portugal.

Similar to the case of *Duarte Agostinho* the Court found the application inadmissible on formal grounds also in the case of *Carême*, because the applicant no longer had any ties to the location where the alleged harmful effects of climate change occurred. The applicant lived in municipality Grande-Synthe located in the Dunkirk area on the coast of the English Channel. This municipality is particularly exposed to risks linked to climate change, including the risk of flooding. The applicant argued that Grande-Synthe is in an area likely to be subject to flooding by 2040. The applicant highlighted the flood risks faced by the municipality due to the government's insufficient mitigation efforts and the inadequacy of the existing local infrastructure to safeguard against the current impacts of climate change. Moreover, he pointed out that the house in which he resided was located less than four kilometres from the coastline and that according to some predictions it would be flooded by 2040, considering the effects of climate change (ECtHR *Carême v. France*, 2024, para. 77). The Court also noted that he had moved to Brussels. In these circumstances, having regard to the fact that the applicant had no relevant links with Grande-Synthe and that, moreover, he did not live in France anymore, the Court did not consider that for any potentially relevant aspect of Article 8 of the Convention, private life, family life or home, he could claim to have victim status under Article 34 of the Convention as regards the alleged risks linked to climate change threatening that municipality (*ibid.*, para. 83).

Likewise, in in the case of *Engels* the Court declared the application inadmissible. On the complaint under Article 8, the Court found that although the applicants pointed to "specific circumstances" at their places of residence in Germany, their submissions remained generalised and did not show

that they were themselves exposed, or at risk of exposure at any relevant future point, to the adverse effects of climate change with the "degree of intensity giving rise to a pressing need to ensure their individual protection". Because the applicants failed to show the requisite victim status, their Article 8 claim was declared incompatible ratione personae with the Convention. On the complaint under Article 2, the Court held that the applicants' submissions did not show that they were exposed to a "real and imminent" threat to their lives such as would trigger Article 2's applicability. Therefore, this count was declared incompatible ratione materiae with the Convention.

Unlike in the three mentioned cases of *Duarte Agostinho, Carême* and *Engels*, the Court took a historic decision in the case of *Verein Klimaseniorinnen Schweiz* and the findings of the Court will be presented in this article because the decision of the Court in this case is unprecedented. Association, Verein KlimaSeniorinnen Schweiz, comprising over 2000 women whose average age is 73, and four women, who are members of the applicant association (aged between 82 and 93), requested the Swiss national authorities to implement appropriate measures to protect them from the harmful effects of climate change. After they were rejected for lack of standing, the Swiss courts dismissed their appeal at the Swiss Federal Administrative Court and Federal Supreme Court. They did not come to discuss the substance of the appeal.

Noting that climate change is an international human rights issue, the Court found that Switzerland's climate policy failed to meet the standard of protection required by the Convention. While there is a large body of case law in which the Court has interpreted human rights in the context of environmental issues, the case of *Verein Klimaseniorinnen Schweiz* marks the first time that the Court has taken a position on the issue of climate change (Hösli, Rehmann, 2024, p. 2). The judgment examines a wide range of arguments in great detail and shows the Court's conviction in its role in protect-

ing the environment and mitigating the effects of climate change under the umbrella of protecting the fundamental human rights that are affected (Žatková, Paľuchová, 2024, p. 232). The Court found a violation of Article 8 of the Convention, the right to private and family life, and the violation of Article 6 of the Convention, the right of access to court, because the Swiss court failed to discuss the merits of the case. This case is also important because the Court granted the applicant association locus standi. With the Court's landmark ruling in the case of *Verein Klimaseniorinnen Schweiz*, Switzerland will go down in history as the first country to be found by an international court to have violated the human rights of its population by failing to take adequate action on climate change (Hösli, Rehmann, 2024, p. 21).

3. From classic environmental cases to climate change cases at the Court

The Convention does not include express provisions on the environment, and the first decision in 1976 of the Court illustrated the difficulty in making environmental claims since the case of *Powell and Rayner v. United Kingdom* in 1990 the Court has shown a greater openness to environmental claims, particularly in cases involving Article 8 of the Convention to the effect that a correct balance has not been struck between individual and community interests (Sands, Peel, 2012, pp. 819-821). The relatively few environmental cases that have been decided thus far by international human rights tribunals recognize that states have discretion within wide limits to determine how to strike the balance between environmental harm and the benefits of the activities causing it (Bodansky, Brunnée, Rajamani, 2017, p. 298). According to the established case law of the Court, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without,

however, seriously endangering their health (ECtHR *López Ostra v. Spain*, 1994, para. 51).

The Court's existing case law in environmental matters concerns situations involving specific sources from which environmental harm emanates. Accordingly, those exposed to that particular harm can be localised and identified with a reasonable degree of certainty, and the existence of a causal link between an identifiable source of harm and the actual harmful effects on groups of individuals is generally determinable. Furthermore, the measures taken or omitted, to reduce the impugned harm emanating from a given source, whether at the regulatory level or in terms of implementation, can also be specifically identified. In short, there is a nexus between a source of harm and those affected by the harm, and the requisite mitigation measures may be identifiable and available to be applied at the source of the harm. In the context of climate change, the Court noted that the key characteristics and circumstances are significantly different. First, there is no single or specific source of harm. Secondly, carbon dioxide is not toxic per se at ordinary concentrations. Thirdly, that chain of effects is both complex and more unpredictable in terms of time and place than in the case of other emissions of specific toxic pollutants. Fourthly, the sources of greenhouse gas (hereinafter referred to as "GHG") emissions are not limited to specific activities that could be labelled as dangerous. Fifthly, combating climate change, and halting it, does not depend on the adoption of specific localised or single-sector measures (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 415–419). Hösli and Rehmann (2024, p. 11) argue that the Court's reasoning in this part of the decision in the case of *Verein Klimaseniorinnen Schweiz* is not entirely convincing because they found this to be an oversimplification by the Court. There is a plethora of environmental threats with very complex chains of effects and unpredictable, potentially fatal consequences.

The specificity of climate-change disputes, in comparison with classic environmental cases, arises from the fact that they are not concerned with single-source local environmental issues but with a more complex global problem. In the context of human rights-based complaints against States, issues of causation arise in different respects which are distinct from each other and have a bearing on the assessment of victim status as well as the substantive aspects of the State's obligations and responsibility under the Convention (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 424).

4. The applicability of the Convention in climate change cases

The Convention is a human rights instrument, and it was not meant to apply to climate change issues. No Article of the Convention is specifically designed to provide general protection of the environment as such (ECtHR *Kyrtatos v. Greece*, 2003, para. 52). To that effect, other international instruments and domestic legislation are more adapted to dealing with such protection (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 445). At the same time, the Court has often dealt with various environmental problems deemed to affect the convention rights of individuals, particularly Article 8 of the Convention (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 96). In contrast with *actio popularis* type of complaints, which are not permitted in the system of the Convention, the crucial element which must be present in determining whether an environmental harm has adversely affected one of the rights safeguarded by the Convention is the existence of a harmful effect on a person and not simply the general deterioration of the environment (ECtHR *Di Sarno and Others v. Italy*, 2012, paras. 80-81).

The Convention is a "*living instrument*" which must be

interpreted in the light of present-day conditions, and following developments in international law, to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 434). In other words, limitations to rights must be construed restrictively, in a manner which gives practical and effective protection to human rights (ECtHR *Demir and Baykara v. Turkey*, 2008, para. 146). An appropriate and tailored approach as regards the various issues in the Convention which may arise in the context of climate change needs to take into account the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of various aspects of human rights (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 434). Blattner argued that the Court differentiated between climate ambition – the level of protection from adverse effects of climate change to which people are entitled – and the means of providing protection. Ambition can be reviewed by the Court, but the choice of means is less so (Blattner, 2024).

In the classic environmental cases, the Court has already recognised that Article 8 of the Convention is capable of being engaged because of adverse effects not only on individuals' health but on their well-being and quality of life and not only because of actual adverse effects but also sufficiently severe risks of such effects on individuals (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 435). In those cases, the Court has already established that Article 8 may apply in environmental cases whether the

pollution is directly caused by the state or whether state responsibility arises from the failure to regulate private industry properly (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 98). It has also held that the duty to regulate not only relates to actual harm arising from specific activities but extends to the inherent risks involved (ECtHR *Di Sarno and Others v. Italy*, 2012, para. 106). In other words, issues of causation are regarded in the light of the factual nature of the alleged violation and the nature and scope of the legal obligations at issue (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 435).

The Court stated three reasons for the applicability of Article 8 of the Convention in climate change cases. First, the applicability is triggered not only by actual damage to the health or well-being of an applicant but by the risk of such effects, where such risks present a sufficiently close link with the applicant's enjoyment of his or her rights under Article 8. Secondly, the complaints in such cases have concerned alleged failures by the authorities to comply with positive obligations directed at the avoidance or reduction of harm. Thirdly, such obligations have been formulated in terms of a duty to take measures to ensure the effective protection of those who might be endangered by the risks inherent in the harmful activity. While climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of states, the global climate regime rests on the principle of common but differentiated responsibilities and respective capabilities of states, incorporated into the international law on climate change. The Court considered that a respondent state should not evade its responsibility by pointing to the responsibility of other states, whether contracting parties to the Convention or not (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 437, 442).

The Court found that Switzerland in the case of *Verein Klimaseniorinnen Schweiz* had breached its positive duties un-

der the Convention by failing to take sufficient action to mitigate the adverse effects of climate change on human rights (Hösli, Rehmann, 2024, p. 3). Interpreting the Convention the Court found that the Article 8 right to private and family life included a right to effective protection by the public authorities from the serious adverse impacts of climate change on lives, health, well-being and quality of life (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 519). Not all Court judges agreed with the final decision in this case. Judge Eicke, the United Kingdom's judge at the Court, in his partly concurring and partly dissenting opinion, argued that the majority in this case had gone well beyond the permissible limits of evolutive interpretation. He emphasized that their reasoning effectively expanded the scope of the Convention in ways that were not sufficiently grounded in the text or the original intent of its provisions. According to Judge Eicke, this approach risked undermining legal certainty and the balance between judicial interpretation and legislative authority. He further cautioned that permitting such expansive readings could set a precedent for future cases, potentially leading to unpredictable obligations for states and diluting the carefully constructed framework of human rights protections established by the Convention (Eicke Opinion, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 3). In this regard Letwin (2024) argues that the Court's expansion of the concept of victim status/standing was highly innovative and involves a major departure from the Court's existing jurisprudence.

5. Positive obligations and responsibilities of the national authorities in climate change litigation

The impact of climate change on the enjoyment of human rights does not imply that climate change is a violation of human rights. Climate change entails a human rights viola-

tion only if there is an identifiable duty that an identifiable duty-holder has breached (Bodansky, Brunnée, Rajamani, 2017, p. 304). The Court stated the fact that to a large extent measures designed to combat climate change, and its adverse effects require legislative action both in terms of the policy framework and in various sectoral fields (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 411). The Court stated in many environmental cases that Article 8 of the Convention imposed a positive obligation on national authorities to adopt adequate measures to ensure effective protection of the environment and human health, in particular through the establishment of an appropriate and effective legal framework (ECtHR *López Ostra v. Spain*, 1994, para. 51).

States often put forward the "*drop in the ocean*" argument in climate litigations. They argue that their individual contribution to climate change is minimal and that they lack the capacity to effectively address the issue on their own. The Swiss government made this argument as well, but the Court rejected it. The Court explained that, although climate change is a global problem that must be tackled collectively through international climate law – mainly the UN climate regime based on the principle of common but differentiated responsibilities, including the Paris Agreement, the Glasgow Climate Pact and the Sharm el-Sheikh Implementation Plan – this does not prevent the Court from assessing Switzerland's own obligations (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 442-444).

According to the Court, this position is consistent with its approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question (ECtHR *M.S.S. v. Belgium and Greece*, 2011, paras. 264, 367). The Court stated the "*drop in the ocean*" argument implicit in the Government's submissions – namely, the capacity of individual states to affect

global climate change. In the context of a state's positive obligations under the Convention, the Court has consistently held that it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the state, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (ECtHR *O'Keeffe v. Ireland*, 2014, para. 149).

The states have a positive obligation to put in place the relevant legislative and administrative framework designed to provide effective protection of human health and life and to apply that framework effectively in practice. The State has a positive obligation to provide access to essential information enabling individuals to assess risks to their health and lives. The choice of means is in principle a matter that falls within the State's margin of appreciation. In assessing whether the respondent state complied with its positive obligations, the Court must consider whether, in the manner of devising and/or implementing the relevant measures, the state remained within its margin of appreciation. Because the Court cannot determine what exactly should have been done, it assesses whether the authorities approached the matter with due diligence and gave consideration to all competing interests (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 538).

The Court argued that it is aware that in some cases concerning climate change, it may be difficult to clearly distinguish issues of law from questions of policy and political choices and, therefore, of the fundamentally subsidiary role of the Convention, particularly given the complexity of the issues involved concerning environmental policy-making

(ECtHR *Dubetska and Others v. Ukraine*, 2011, para. 142). It has stressed that national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate the relevant needs and conditions. In matters of general policy, or political choices, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker is given special weight (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 97). Accordingly, the Court emphasized that the margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with a European supervision by the Court, which must be satisfied that the effects produced by the impugned national measures were compatible with the Convention (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 450).

When assessing whether a state has remained within its margin of appreciation, the Court examined whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need of certain criteria. Firstly, they need to adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments. Secondly, they need to set out intermediate GHG emissions reduction targets and pathways that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies. Thirdly, they need to provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets. Fourthly, they need to keep the relevant GHG reduction targets updated with due diligence and based on the best available evidence. Fifthly, they need to act in good

time and appropriately and consistently when devising and implementing the relevant legislation and measures (*ibid.*, para. 550). According to some scholars, the Court was fully aware of the risks of subjecting the acts and failures of state authorities to very strict scrutiny on a matter as complex as climate change mitigation (Milanovic, 2024).

Generally, human rights law, like international environmental law, imposes duties on states rather than on corporations, because states have a duty to protect against climate change by regulating private activities that impair the enjoyment of human rights and providing a remedy against the responsible actors (Bodansky, Brunnée, Rajamani, 2017, p. 307). It follows, therefore, that each state has its share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the state's capabilities rather than by any specific action (or omission) of any other state (ECtHR *Duarte Agostinho and Others v. Portugal and 32 Others*, 2024, paras. 202-203).

The Court found four dimensions of causation, involving both scientific and legal issues. The first dimension of the question of causation relates to the link between GHG emissions and the various phenomena of climate change. The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. The third concerns the link between harm, or risk of harm, allegedly affecting specific persons or groups of persons and the acts or omissions of state authorities against which a human rights-based complaint is directed. The fourth relates to the attributability of responsibility regarding the adverse effects arising from climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of greenhouse gas emissions (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 425).

6. Victim status of individuals in the recent climate change litigation before the Court

In the climate change context, defining the geographic scope of the rights holders is necessary even when a government acts, or fails to act, within a state's territory, since GHG emissions do not respect borders: emissions purely within a state's territory affect enjoyment of human rights by people everywhere (Bodansky, Brunnée, Rajamani, 2017, p. 308). According to the Court, the applicant must be able to show that he or she was "directly affected" by the measure complained of (ECtHR *Lambert and Others v. France*, 2015, para. 89). This implies that the applicant has been personally and actually affected by the alleged violation of the Convention, which is normally the result of a measure applying the relevant law or a decision allegedly in breach of the Convention or, in some instances, of the acts or omissions of State authorities or private parties allegedly infringing the applicant's Convention rights (ECtHR *Berger-Krall and Others v. Slovenia*, 2014, para. 258). However, this does not necessarily mean that the applicant needed to be personally targeted by the act or omission complained of. What is important is that the impugned conduct personally and directly affected him or her (ECtHR *Aksu v. Turkey*, 2012, paras. 51-54). Two types of potential victim status may be found in the case law.

The first type concerns persons who claim to be presently affected by a particular general legislative measure. The Court has specified that it may accept the existence of victim status where applicants contend that a law violates their rights, in the absence of an individual measure of implementation, if they belong to a class of people who risk being directly affected by the legislation, or if they are required either to modify their conduct or risk being prosecuted (ECtHR *Tănase v. Moldova*, 2010, para. 104; ECtHR *Sejdić and Finci v. Bosnia and Herzegovina*, 2009, para.

28). The second type concerns persons who argue that they may be affected at some future point in time. The Court has made clear that the exercise of the right of the individual petition cannot be used to prevent a potential violation of the Convention and that, in theory, the Court cannot examine a violation other than *a posteriori*, once that violation has occurred. It is only in highly exceptional circumstances that an applicant may nevertheless claim to be a victim of a violation of the Convention owing to the risk of a future violation (ECtHR *Berger-Krall and Others v. Slovenia*, 2014, para. 258). In general, the relevant test to examine the existence of such victim status is that the applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him or her will occur; mere suspicion or conjecture being insufficient in this regard (ECtHR *Asselbourg and Others v. Luxembourg*, 1999). The term "potential" therefore refers, in some circumstances, to victims who claim that they are at present, or have been, affected by the general measure complained of, and, in other circumstances, to those who claim that they might be affected by such a measure in the future. In some instances, these two types of situations may coexist or may not be easily distinguishable (ECtHR *Tănase v. Moldova*, 2010, para. 108) and the relevant case-law principles may apply interchangeably (ECtHR *Shortall and Others v. Ireland*, 2021, paras. 50-61).

In environmental cases, the Court has not considered it sufficient for an applicant to complain of general damage to the environment (ECtHR *Di Sarno and Others v. Italy*, 2012, para. 80). Although the Court did not discuss these cases, Hösli and Rehmann (2024, p. 6) argue that it presumably decided to distinguish climate change and its ubiquitous effects from other environmental harms, however widespread. The Court may have been fearful of opening the floodgates to a plethora of climate change cases brought by individuals.

According to the Court's existing case law in this context, to claim victim status, the applicant needs to show that he or

she is impacted by the environmental damage or risk complained of. The criteria on which the Court has relied to establish victim status includes most notably issues such as the minimum level of severity of the harm in question, its duration and the existence of a sufficient link with the applicant or applicants, including, in some instances, the geographical proximity between the applicant and the impugned environmental harm (ECtHR *Pavlov and Others v. Russia*, 2022, paras. 64–70).

One of the most interesting parts of the explanation of the judgement in the case of *Verein Klimaseniorinnen Schweiz* was related to victim status. The Court argued that given the nature of climate change and its various adverse effects and future risks, the number of persons affected, in different ways and to varying degrees, is indefinite. The resolution of the climate crisis requires, and depends on, a comprehensive and complex set of transformative policies involving legislative, regulatory, fiscal, financial and administrative measures as well as both public and private investment. The critical issues arise from failures to act, or inadequate action. In other words, they arise from omissions. In key respects, the deficiencies reside at the level of the relevant legislative or regulatory framework. The need, in this context, for a special approach to victim status, and its delimitation, therefore, arises from the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely. The outcome of legal proceedings in this context will inevitably have an effect beyond the rights and interests of a particular individual or group of individuals, and will inevitably be forward-looking, in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 479). The Court noted that the assessment of victim

status in this context of complaints concerning alleged omissions in general measures relating to the prevention of harm, or the reduction of the risk of harm, affecting indefinite numbers of persons is without prejudice to the determination of victim status in circumstances where complaints by individuals concern alleged violations arising from a specific individual loss or damage already suffered by them (ECtHR *Kolyadenko and Others v. Russia*, 2012, para. 150-155).

Therefore, having regard to the special features of climate change, when determining the criteria for victim status the Court relies on distinguishing criteria such as a particular level and severity of the risk of adverse consequences of climate change affecting the individual(s) in question, taking into account the pressing nature of their need for individual protection. The Court established the following circumstances concerning the applicant's situation: firstly, the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of the risk of adverse consequences of governmental action or inaction affecting the applicant must be significant; and secondly, there must be a pressing need to ensure the applicant's protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. The threshold for fulfilling these criteria is especially high (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 486-488).

With these findings, the Court has developed a special approach for assessing the victim status in climate change cases. The ubiquitous nature of the effects of climate change sets the issue apart from other environmental matters previously adjudicated by the Court, where negative environmental effects were more localized and were attributable to one or only a few polluters (Hösli, Rehmann, 2024, p. 5). Although the Court did not discuss these cases, it presumably decided to distinguish climate change and its ubiquitous effects from other environmental harms, however widespread

(*ibid.*, p. 6).

The Court referred to the general principles on the victim status of physical persons set out in the case *Verein KlimaSeniorinnen Schweiz* also in the case of *Carême*, but it found the applicant's complaint inadmissible. The Court found no reason to question the hypothetical nature of the risk relating to climate change affecting the applicant (ECtHR *Carême v. France*, 2024, para. 80).

7. Standing of associations in the recent climate change litigation before the Court

Although the applicant individuals in the case *Verein Klimaseniorinnen Schweiz* did not have standing, the applicant association Verein KlimaSeniorinnen did have "*locus standi*", only for the purpose of Article 8 of the Convention. But the applicant association did not have victim status, because the association, as a legal construct, cannot be a victim of an alleged violation of human rights (Hösli, Rehmann, 2024, p. 6). The applicant association was found to have standing on behalf of those individuals whose Convention rights may arguably be subject to specific threats or adverse effects due to climate change (Žatková, Paľuchová, 2024, p. 234). The Court argued that in modern-day societies, recourse to collective non-profit bodies such as associations is sometimes the only means available to citizens whereby they can defend their particular interests effectively (ECtHR *Gorraiz Lizarraga and Others v. Spain*, 2004, para. 38).

The Court stated that in order to be recognised as having locus standi to lodge an application under Article 34 of the Convention on account of the alleged failure of a state to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must meet certain conditions. Firstly, an association has to be lawfully established in the ju-

risdiction concerned or have standing to act there. Secondly, an association has to be able to demonstrate that it pursues a dedicated purpose following its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change. Thirdly, an association has to be able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention. According to the Court, there has been an evolution in contemporary society as regards recognition of the importance of associations to litigate issues of climate change on behalf of affected persons (ECtHR *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 497, 502).

In the judgement of the case of *Verein Klimaseniorinnen Schweiz*, the Court appealed several times to the exclusion of *actio popularis* (*ibid.*, paras. 446, 481, 484, 488, 500, 596). Yet, this fact alone, as stated by Judge Eicke, UK's judge at the Court, did not prevent it from giving a different, more modern, perhaps even more necessary view of the complaint brought in the name of the general public (Žatková, Paľuchová, 2024, p. 235). In the attempt of the Court to strike a balance between accommodating evolution and being mindful of the fact that the Convention does not contain an *actio popularis* provision, the Court developed an "*association test*" which can be characterized as the Aarhus Convention with a Convention twist (Pedersen, 2024). Hösli and Rehmann (2024, pp. 6-7) argue that by extending the rules on the locus standi of associations, the decision highlights the important role of environmental associations under the Aarhus Convention, which is applicable in most member states of the Council of Europe. A core element of the

decision is the Court's willingness to embrace a collective (group) dimension for human rights protection in climate change cases.

8. Conclusion

Lavrysen and Bouquelle (2023, p. 30) argued that some general principles can be deducted from looking at recent case law in strategic climate cases before the Court. Firstly, the protection of life and health includes protection against environmental pollution. Secondly, human rights constitute a positive obligation to protect against environmental harm, including the harm resulting from climate change. Thirdly, emission cuts must not be postponed to later when only an extremely short time is left for radical transformations and fourthly, reducing emissions is obligatory even if a State's share in global emissions is small.

The decision of the Court in the case of *Verein Klimaseniorinnen Schweiz* is the first of its kind in which the Court identified a violation of the Convention's provisions in the context of climate change. The Swiss national authorities are obligated to adhere to this judgment and must consider it in their future actions and decisions. Žatková and Paľuchová (2024, p. 231) argued that the Court gave the entire case a new dimension offering an interesting perspective on resolving the case and the impact of the climate crisis on the (not only) applicants' human rights. The judgment thus constituted a reason to rejoice not only for the applicants or the public involved but also for legal scholars. The Court faced a difficult task in balancing a pressing societal challenge with the need to avoid an unchecked expansion of the interpretation of the Convention. The decision will have significant consequences not only for future lawsuits and disputes related to climate change before the Court (such as ECtHR *Müllner v. Austria*; ECtHR *Soubeste and Others v. Austria and 11 Other States*; ECtHR *Norwegian Grandparents' Climate Cam-*

paign and Others v. Norway), but also for similar legal cases in all member states of the Council of Europe. Pedersen (2024) argues that Court's cases relating to climate change might nevertheless give rise to a series of effects, which can be symbolic, important and forceful although strictly speaking not doctrinally significant and that domestic courts could expand the application of the Convention and tailor it to the specific domestic contexts.

Ultimately, Court's judgment in the case of *Verein Klimaseniorinnen Schweiz* will also influence legislative measures in the field of environmental protection and climate change, as the Court's decision addressed the insufficient action of a member state in this area. According to some legal scholars, the judgment is not fundamentally transformative in its impact on future decision-making or legislative practices. This is largely due to the legal void surrounding climate change that was unique to Switzerland, where the absence of regulation was evident in the failed domestic referendum that rejected ambitious emission reduction commitments (*ibid.*). On the other hand, EU countries are obligated to comply with Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law), which imposes binding emission reduction requirements on member states. Either way, as Žatková and Paľuchová (2024, p. 240) argue, the significance of a state's positive obligation to enact environmental legislation should not be underestimated. In this context, it seems crucial to acknowledge that the state's positive obligation to take necessary measures to mitigate the impacts of climate change at all levels has extensive implications for various aspects of its international legal responsibilities. Finally, the Court judgment also impacts public discourse in general.

In climate change cases the Court leans heavily on its general environmental jurisprudence insofar and the case of

Verein Klimaseniorinnen Schweiz is, therefore, in a sense, the classic environmental due diligence obligation with a climate change top-up (Pedersen, 2024). For the first time, the Court recognised a right to climate protection (Žatková, Paľuchová, 2024, p. 229). It is the historic judgment in which the Court has, for the first time, ruled on human rights violations due to climate change. Association Klimaseniorinnen Schweiz had standing and was successful in this case in comparison to applications in the cases of *Duarte Agostinho* and *Carême*, which were inadmissible. Although the applicants were unsuccessful in those two cases, the reality is that they have achieved, before the court of public opinion, some of what they set out to achieve before the Court (Alogna, Billiet, 2023, p. 35). Judge Eicke, the UK's judge at the Court, agreed that there is more to litigation than winning in the courts. It is evident that the discussion around the *Duarte Agostinho* case, particularly in the media and in the public sphere, has undeniably exerted an influence (*ibid.*, p. 36). Although a judgment might not come out in favour of the applicants challenging the responding states' lack of climate change responses, it might nevertheless give rise to a series of effects, which can be symbolic, important and forceful although strictly speaking not doctrinally significant (Pedersen, 2024).

There are some risks known as climate populism when bringing climate changes to courts. As Judge Eicke argued in his opinion in the case of *Verein Klimaseniorinnen Schweiz* Court is creating unrealistic expectations that proceedings before the Court could result in quicker and more effective climate protection (ECtHR Eicke Opinion, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, para. 69). This includes the utilisation of courts in policy-related matters such as climate change and poses the inherent danger of instrumentalising the judicial system in the political game and raises the question of the possible hazards of employing the courtroom for such specific purposes (Alogna, Billiet, 2023, p. 41).

The mandate of the Court is limited to ensuring that the Convention is complied with and that it does not have the authority to ensure compliance with other international treaties and obligations. Judge Eicke further contended that the Court should not have established what he describes as a "*new right*" to effective protection against the impacts of climate change under Articles 2 and 8 of the Convention (ECtHR Eicke Opinion, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 62 *et seq*.).

Courts in climate change litigation can make a meaningful contribution towards solving the problem of climate change. They can partner with the legislature and the executive to promote the rule of law for the benefit of the planet and its people (Preston, 2016, p. 17). The positive changes of climate change litigation go far beyond the courtrooms, claims and outcomes of these disputes (Villavicencio Calzadilla, 2019, p. 232). With new cases awaited before the Court, climate change litigation will further develop soon. No matter the outcome of the pending cases before the Court, and future climate litigation cases in general, the route to domestic court and Court will continue to be pursued by claimants as long as climate change continues to be a threat to the very existence of the environment and mankind (Billiet *et al*., 2023, p. 399). Considering that we have seen fast growth of climate litigation in the last decade, in the future national and regional courts will inevitably face a growing number of climate-related cases.

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