ECtHR JUDGMENT IN THE *VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS V. SWITZERLAND*: EXPANDING COURT ACCESS IN CLIMATE MITIGATION CASES

Petra Baumruk

Abstract: The Article examines the landmark judgment of the Grand Chamber of the European Court of Human Rights in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. This judgment deals with interaction between climate change and human rights. The court ruled that Switzerland violated the European Convention on Human Rights (ECHR) by failing to adequately address climate change. It is the first climate change litigation in which an international court has ruled that state inaction violates human rights. Integrated climate change action by states, as well as the commitments of states in this area, is one of the most pressing contemporary issues. Legally, the judgment represents a departure from established jurisprudence, introducing transformative principles in human rights law. It is evident from the Court's reasoning that its decision is also influenced by human rights and environmental policy considerations. This reflects an effort to expand judicial avenues for environmental organizations seeking to assert the ECHR rights in cases of alleged state inaction on climate change, particularly regarding its adverse effects on human health and well-being. Even though the judgment has faced criticism, on both legal and political grounds, the verdict marks a milestone within the area of human rights and environmental protection.

Resumé: Článek se zabývá průlomovým rozsudkem Velkého senátu Evropského soudu pro lidská práva ve věci *Verein KlimaSeniorinnen Schweiz a ostatní proti Švýcarsku*. Tento rozsudek se týká propojení mezi změnou klimatu a ochranou lidských práv. Soud rozhodl, že Švýcarsko porušilo Evropskou úmluvu o ochraně lidských práv (EÚLP) tím, že nepřijalo dostatečná opatření k řešení změny klimatu. Jedná se o první případ klimatického sporu, v němž mezinárodní soud konstatoval, že nečinnost státu představuje porušení lidských práv. Integrovaná opatření proti změně klimatu a závazky států v této oblasti představují jeden z nejpalčivějších současných problémů. Po právní stránce rozsudek představuje odklon od dosavadní judikatury a zavádí transformační principy do práva v oblasti lidských práv. Z odůvodnění soudu je patrné, že jeho rozhodnutí bylo rovněž ovlivněno úvahami z oblasti lidskoprávní a environmentální politiky. To odráží snahu rozšířit možnosti soudní ochrany pro environmentální organizace, které se snaží domoci práv podle EÚLP v případech údajné nečinnosti státu v otázkách změny klimatu, zejména pokud jde o její negativní dopady na lidské zdraví a pohodu. Přestože rozsudek čelí kritice jak z právního, tak politického hlediska, představuje důležitý milník v oblasti lidských práv a ochrany životního prostředí.

Key words: human rights, environment, ECtHR, positive obligation, ECHR, *actio popularis*, non-governmental organization, climate change, fair trial, right of appeal

About the author:

Petra Baumruk, Ph.D., LL.M., is an Icelandic lawyer currently working as an Associate Professor at Bifröst University in Iceland. She is a former Ph.D. and LL.M. student at Charles University, in Prague. Her main fields of interest are public international law, environmental protection and human rights. Prior to her current position, Petra was a lecturer at the

University of Iceland and at Reykjavík University. She worked as a Legal Counsel at the Environmental and Natural Resources Board of Appeal in Reykjavík, Iceland (from 2019 to 2022) and as a Lawyer at the Ministry of Welfare (from 2017 to 2019) where her main projects were implementing the Icelandic Equal Pay System, revision of the Icelandic Equality Act and the Act on Equal Treatment Irrespective of Race and Ethnic Origin.

1. Introduction

The judgment of the European Court of Human Rights (ECtHR or "the Court") in the case of *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, which was delivered on April 9th, 2024,[1] concerns a complaint brought by four elderly women (applicants no. 2–5) on the one hand, and a non-governmental organization (NGO) on the other, named *Verein KlimaSeniorinnen Schweiz*. The members of the organization are elderly women who are concerned about the impact of climate change on their living conditions and health. The applicants' claims were that the Swiss state had failed to take sufficient measures to reduce human-induced climate change, thereby violating Article 8 of the European Convention on Human Rights (ECHR or "the Convention"), the right to respect for private and family life and the home, and potentially Article 2 of the ECHR, the right to life. Additionally, the applicants argued that the state had violated Article 6(1) of the ECHR, the right of access to a court, and thereby also Article 13 of the Convention, the right to an effective remedy.[2]

The judgment is especially important for two reasons. On the one hand, it links the obligations of states to which they have committed themselves in the field of climate change, and on the other hand, the protection of human rights. As can be inferred from the content of this article, the judgment is undoubtedly grist for the mill of campaigners for an improved environment, whatever its practical effects may be in the long term. In this regard, it is worth noting that the judgment has been subject to considerable criticism of an academic and political nature. The Swiss authorities have, among other things, declared that they do not intend to abide by it, as they consider it to be clearly wrong and that it violates Switzerland's right to self-determination in the field of environmental matters, particularly with regard to climate change.[3] Others have welcomed the judgment and consider it a significant contribution to environmental and human rights issues.[4] Thus, this Article will shortly discuss and evaluate primarily three issues, that were essentially resolved in this case and highlights the judgments' importance on mitigating climate change while upholding positive human rights obligations. Firstly, whether the association *KlimaSeniorinnen*, composed primarily of

[1] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, Application no. 53600/20 (ECtHR, 9 April 2024). (Hereafter *KlimaSeniorinnen*).

[2] *KlimaSeniorinnen*, paras 574 and 640.

[3] NIRANJAN, Ajit. „Swiss lawmakers reject climate ruling in favour of female climate elders" Theguardian.com (June 12, 2024). Available at: https://www.theguardian.com/world/article/2024/jun/12/swiss-lawmakers-reject-climate-ruling-in-favour-of-female-climate-elders (accessed June 9, 2025).

[4] „Assessing the Impact of KlimaSeniorinnen and Associated Rulings" (European Law Institute, June 24, 2024) Available at: https://www.europeanlawinstitute.eu/news-events/news-contd/news/assessing-the-impact-of-klimaseniorinnen-and-associated-rulings-1/?no_cache=1&cHash=e882f804044079e26a9ed27283e06c26 (accessed May 20, 2025). On the same day as the judgment in the *KlimaSeniorinnen* case was delivered, the ECtHR made two decisions in which two other climate-related cases were inadmissible for examination on the merits. These cases are *Duarte Agostinho and Others v. Portugal and Switzerland,* Application no. 39371/20, (ECtHR, 9 April 2024) and *Carême v France*, Application no. 7189/21, (ECtHR, 9 April 2024).

older women concerned about the effects of climate change on their health and lives, had a right of appeal under Article 34 of the ECHR. Secondly, whether the State had violated Article 8 of the ECHR on the right to privacy, home and family life and finally, thirdly, whether there had been a violation of Article 6(1) thereof on access to a court and thus the right to a fair trial and Article 13 on the right to an effective remedy. In short, the conclusion was that the association had a right of appeal under Article 34 of the ECHR, while the Swiss State had violated Article 8, as well as Article 6(1) of the ECHR.[5]

2. Right of appeal

Perhaps the most striking thing about the judgment in the *KlimaSeniorinnen* case is what it decides on who should be able to bring an action. As to the ECtHR, this depends on the answer to the question of whether a person is a victim within the meaning of Article 34 of the ECHR. While for a national court this depends on national procedural requirements, which may be different and more flexible that the ECtHR's one, as for example, rightly established by the Netherlands Court of Appeal and the Supreme Court in the famous *Urgenda* case.[6]

Article 34 of the ECHR states that it is permissible to receive complaints from any individual, organization, or group of individuals who claim that a contracting party has violated the rights described in the Convention and its Protocols. The second sentence of the Article further states that contracting parties undertake not to hinder in any way the effective exercise of this right. The provision contains two main conditions that a complainant must meet to have the right to lodge a complaint. First, the complainant must fall into one of the categories listed in the provisions (i.e. an individual, an organization, or a group of individuals), and that the complainant must demonstrate that they are a victim of the alleged violation of the Convention.[7]

The concept of "victim" is interpreted independently and regardless of how it is defined in national law. If the complainant does not have standing or loses it, the complaint will be dismissed as inadmissible, cf. Article 35(4) of the ECHR. When a complainant claims to have suffered human rights violations due to climate change, various issues arise relating to the interpretation of Article 34 of the ECHR. According to the above mentioned, the main rule is that in order for an appeal to be considered on its merits by the Court, the appellant must be able to demonstrate that they are the actual victim of the violation, and appeals based on *actio popularis* or *in abstracto* will be dismissed, as in such cases the appellant has no independent interest in the outcome of the case.

As for organizations, non-governmental organizations may have the right to file a complaint under Article 34 of the ECHR.[8] The aforementioned requirements that the applicant must be considered a victim within the meaning of Article 34 to have standing to lodge a complaint applies equally to organizations, as the wording of the provision indicates.

---

5 *KlimaSeniorinnen*, para. 574 and 640. See also SAVARESI, Annalisa: Verein KlimaSeniorinnen and Others v Switzerland: Making climate change litigation history. *Review of European, Comparative & International Environmental Law,* Vol 34 (1), 2025, p. 286.

6 *Urgenda Foundation v. The Netherlands*. Supreme Court of the Netherlands, Judgment of 20 December 2019. Case Number: 19/00135.

7 European Court of Human Rights: „Practical Guide on Admissibility Criteria "(Council of Europe February 28, 2025), p. 9. Available at: https://www.echr.coe.int/d/admissibility_guide_eng (accessed May 10, 2025).

8 *Ibid.*, p. 11.

In case law, it has generally not been considered that organizations have the right to complain under Article 34 if they do not have a direct interest at stake or are not themselves victims of the alleged violation. It has not been considered relevant even if the interests of their members are at stake. Thus, organizations cannot rely on the rights of their members to meet the requirement of victim status, even if the organization's purpose is to promote the rights of alleged victims.[9] This result from the fact mentioned above that the Convention does not allow for an *actio popularis*, which means that organizations cannot file a complaint on behalf of the general public or general interests if the state's action does not affect them directly. In order to demonstrate that this requirement is met, organizations must provide convincing evidence that the alleged violations are likely to affect them personally.[10] In this respect the case presents an important and nuanced interpretation of *locus standi* (legal standing) under Article 34 of the ECHR. The discussin is twofold. On the one hand, it concerns the four women who were individual applicants in the case (applicants no 2-5), and on the other hand, the association KlimaSeniorinnen.

Traditionally, the ECtHR has required individual victim status – meaning a person must show they are directly and personally affected by a violation. However, in the *KlimaSeniorinnen* case the Court rejected the individual applicants for lack of victim status. Even so, it accepted the standing of the association, recognizing its role in representing a group particularly vulnerable to climate change. As will be further discussed in chapter 5, this move might be interpreted as a step toward collective or representing standing, which resembles *actio popularis* – a legal action brought by a person or group not necessarily directly harmed, but acting in the public interest. This so-called colectivization of standing refers to the legal recognitions of groups, associations, or communities as plaintiffs in climate ligitations, rather than requiring each individual prove personal harm. One might proclaim that this approach is particularly relevant in climate cases where harm perhaps diffuse, systemic and long-term, affecting communities rather than each individual. From this one can drow the assumtion tha in human rights-based climate litigation this is a growing legal strategy aimend at overcoming procedural barriers that often prevent individuals from accessing justice in clima-related cases.

3. Positive obligations on states in environmental matters

As previously mentioned, the applicants in the *KlimaSeniorinnen* case based their argument on the claim that their health was being threatened by heatwaves, which would become more severe due to climate change caused by greenhouse gas emissions from the Swiss state. Specifically, they argued that the state's inaction violated their right to life under Article 2, and their right to respect for private and family life under Article 8 of the ECHR. The Court did not find it necessary to address Article 2 specifically or whether it had been violated. The main reason for this is that the Court considered it appropriate to focus primarily on Article 8 of the ECHR. In this regard the Court noted that in presenting the considerations relevant to Article 8, account was also taken of the main principles that have emerged in cases concerning Article 2 of the Convention.[11]

[9] *Ibid*., p. 16.

[10] This approach is supported by various court decisions, i.e., *Genderdoc-M and M.D. v Moldova*, App No 23914/14 (ECtHR, December 14, 2021), paras. 25–26 and Asselbourg and Others v Luxembourg, App No 29121/95 (ECtHR, June 29, 1999).

[11] *KlimaSeniorinnen*, para. 537.

In short, the Court concluded that the state had violated its positive obligations under Article 8 of the Convention. The Court approaches the issue from the perspective of whether Switzerland fulfilled its positive obligations to prevent individuals from suffering harm because of the negative effects of climate change. Considering, the Court's previous case law on environmental matters and Article 8 of the ECHR, it can well be argued that this outcome should not have come as a surprise. The Court has frequently found that states have violated Article 8 where authorities have failed to take action to protect individuals from the harmful effects of environmental factors.[12]

However, there are certain novelties in the judgment, as it differs from previous case law in two ways. First, because it does not involve negative effects in the applicant's immediate environment, such as those caused by waste treatment plants or heavy industry.[13] Second, by accepting that a violation was found regarding the association due to possible effects on its members 'or others.' This is unusual and can likely be argued to be inconsistent with earlier case law, but it stems from the Court's conclusion that the association has standing under Article 8, and is, to some extent, a logical continuation of that conclusion.

Nevertheless, when assessing the precedent value of this judgment for other states, it must be kept in mind that it is based on the Court's assessment of the situation in Switzerland. This means that when evaluating whether other states are also in breach, the situation in those states must be assessed, and it is possible that the outcome may differ. In other words, the assessment must be made specifically based on the circumstances in each individual state and on whether there are available remedies in that state for associations to challenge the matter before courts or by other means. Even so, one can argue that the message is clear - if a state fails to act effectively against the effects of climate change, it may be considered in violation of Article 8 and, where applicable, Article 2 of the ECHR.

As previously mentioned, Article 8 of the ECHR provides for the right to respect for private and family life, home, and correspondence. Paragraph 1 proclaims these rights, while paragraph 2 addresses the limitations to the specified rights. As with Article 2 of the ECHR, Article 8 has been understood to entail both negative and positive obligations. The original purpose of the provision was to protect individuals from arbitrary interference by authorities that would infringe upon the rights described in paragraph 1 of the Article. Thus, the provision primarily imposes negative obligations, requiring the contracting states to refrain from such interference unless it can be justified under paragraph 2. The positive obligations consist in the right of individuals, under Article 8, to expect the authorities to take measures to ensure the effective protection of these rights.[14] The Article reads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

[12] Annalisa Savaresi, *op. cit.*, pp. 281–282.

[13] In this regard, see i.e., *Fadeyva v. Russia*, App No 55723/00, (ECtHR June 9, 2005) para. 132 and *Guerra and Others v. Italy*, App No. 14967/89, (ECtHR, February 19, 1998), paras. 12–13; and 57.

[14] European Court of Human Rights „Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence "(Council of Europe 2025), p. 8. Available at https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng (accessed June 16, 2025).

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

According to its wording, Article 8 does not contain any explicit reference to the environment or to individual rights related to it. However, through the Court's interpretation, the scope of the provision has evolved, both in terms of the rights it is understood to encompass and the obligations it places on member states, among other areas, in environmental matters.[15] The Court has addressed numerous cases concerning environmental issues that are relevant to the rights of individuals under the Convention, particularly Article 8. For instance in the *López Ostra v. Spain* case, the Court confirmed for the first time that serious environmental pollution, which affects a person's well-being and quality of life, could interfere with their enjoyment of the right to respect for home, family life, and private life under paragraph 1 of Article 8, even if it could not be demonstrated that their health was placed in serious or immediate danger.[16] However, this does not automatically mean that Article 8 of the ECHR will be considered violated in every instance where environmental degradation or harm is shown. For an applicant to be able to rely on Article 8, there must be environmental factors that directly affect their private and family life or their home.

In this context, the Court considers two key aspects: whether there is a causal link between a specific activity and the negative effects on the individual, and whether those negative effects reach a certain level of severity.[17] A comprehensive assessment of the circumstances must be carried out in each case, including the extent and duration of the disturbances experienced by the applicant, as well as the direct physical and mental impact of environmental degradation in their immediate surroundings. The broader environmental context must also be considered. This includes, for example, the expectation that someone choosing to live in a major city may need to tolerate lower environmental quality than would be expected in a rural area. Provided these conditions are met, the Court has accepted that serious environmental pollution, such as excessive noise from air traffic, air pollution, unpleasant odors or other pollution from sewage treatment plants, and the emission of toxic gases from factories, can constitute a restriction on an individual's right to enjoy their home in such a way that it raises questions as to whether Article 8 of the Convention may have been violated, even if the pollution does not reach a level that seriously threatens the individual's health.[18]

4. Access to a court

A part of the judgment addresses Article 6 of the ECHR where the issue is examined whether the decisions of the authorities in Switzerland, and subsequently the courts thereof, regarding the applicants' claims constituted a violation of Article 6(1). The applicants all argued that they had not been granted access to a court to have their claims, concerning whether their rights had been violated due to the authorities' inaction on climate issues, adjudicated. The ECtHR concluded that by refusing to examine the applicants' claims and

[15] *Ibid.*, pp. 8–9. See also KRSTIĆ, Ivana and ČUČKOVIĆ, Bojana: „Procedural aspects of article 8 of the ECHR in environmental cases: The greening of human rights law ", *Belgrad Law Review*, Vol. 3, 2015.

[16] *López Ostra v. Spain*, App No. 16798/90, (ECtHR December 9, 1994).

[17] See *Fadeyeva v. Russia*, *op. cit.* and *Guerra and Others v Italy*, *op. cit*.

[18] *Hatton and Others v the United Kingdom, op. cit.*; *López Ostra v. Spain, op. cit.;* and *Guerra and Others v Italy, op. cit.*

dismissing the case, the Swiss state had violated the organization's right to a fair trial under Article 6(1) of the ECHR.

As noted, Article 6 concerns the right to a fair trial. The provision consists of three paragraphs in total, with paragraphs 2 and 3 applying to criminal cases, while paragraph 1 covers both civil and criminal matters. As to the case the first sentence of Article 6(1) is of particular relevance. The right includes access to a court that meets the requirements set out in the provision, i.e., that the court is independent, impartial, and established by law. Furthermore, Article 6(1) lays down two conditions that must be fulfilled. Firstly, the applicants must be considered victims of a violation, and secondly, there must be a dispute over civil rights or obligations which, with at least minimal legal grounds, can be argued to exist under national law.[19]

Regarding the applicants' status as victims, the Court has held that, for an applicant to qualify as a victim of a violation under Article 6, it is generally sufficient that they were a party to proceedings before the domestic courts. Regarding individuals, this is clear from well-established case law.[20] However, exceptions have been made, among other things, considering the nature of the underlying dispute and whether the rights at issue in the case fall at all within the scope of Article 6(1) of the ECHR. The Court considered that both aspects had to be examined together, that is, whether the applicants could be regarded as victims of an alleged violation of Article 6(1), as well as whether the provision applied to the rights being contested.[21]

Furthermore, as previously mentioned, the provision requires that there is a dispute over a right or obligation which, with at least minimal legal grounds, can be claimed to exist under national law, and it does not matter whether the rights in question are derived directly from the Convention or based on some other legal source. The dispute must be genuine and concern either the existence or the scope of the right. What is more, the outcome of the case must be decisive for the rights at issue in the dispute. Vague or indirect consequences for alleged rights are not sufficient to trigger the application of Article 6(1).[22] The rights must also be of a private-law character. Finally, it is reiterated once again that the Convention does not protect the right to *actio popularis*.[23]

In the part of the case concerning the applicants' access to domestic courts, the Court assessed whether the complaint by the organization on the one hand, and by applicants no. 2–5 on the other, was admissible under Article 6(1) of the ECHR. Regarding the organization, it was concluded that the complaint was admissible, but not so for applicants no. 2–5. This conclusion is difficult to reconcile with previous case law, and it can also be said to contain a certain contradiction: namely, that the organization's complaint is considered to fall under Article 6(1), while the complaints of its individual members do not. As to the conclusion that the organization's rights under Article 6(1) of the ECHR had been violated, it can be said that, after the Court determined that the organization had standing to lodge a complaint and

[19] European Court of Human Rights „Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)" (Council of Europe 2025), pp. 6-7. Available at https: https://rm.coe.int/1680700aaf (accessed June 18, 2025).

[20] *KlimaSeniorinnen*, para. 590.

[21] *Ibid*., para. 591.

[22] *KlimaSeniorinnen*, paras. 594–595.

[23] *Ibid.* para. 596.

that Article 8 had been breached, the outcome was inevitable. This primarily follows from the principle of subsidiarity as expressed in Article 35(1) as well as Article 13 of the ECHR. The reason for this is that Article 35 requires that, for the Court to be able to examine a case, domestic remedies must have been exhausted. It also stems from Article 13, which stipulates that anyone whose rights or freedoms, as set out in the Convention, have been violated shall have an effective remedy before a national authority, regardless of whether the violation was committed by public officials. After the Court concluded that the organization had standing to bring the case and that the state, through its inaction, had violated Article 8 of the ECHR, it can be said that it was in fact logical, and perhaps even inevitable, to require the state to consider the organization's claims, as they had been presented before domestic courts, on their merits. The conclusion regarding Article 6(1) of the ECHR is therefore ultimately based on reasoning similar to that which underpinned the Court's decision under Article 34: namely, that there is a strong need, in climate-related matters, to grant environmental organizations that meet the criteria set out in the judgment standing before the courts to press for adequate governmental action on climate issues.

5. Opposing views: political and legal criticism

The judgment has received mixed reactions. Many have criticized it, both from a legal perspective and from a legal-political or even purely political standpoint. However, it is noteworthy that the seventeen judges who ruled in the case were almost unanimous. Sixteen judges agreed that the organization had standing under Article 34 of the ECHR, with only one dissenting. The same applies to the conclusion that Article 8 of the ECHR had been substantively violated. In both instances, it was the British judge, Tim Eicke, who disagreed, as detailed extensively in his dissenting opinion.[24] The dissenting opinion effectively summarizes the core of the criticism that has been directed at the judgment. All the judges, on the other hand, agreed that there had been a violation of paragraph 1 of Article 6 of the ECHR.

The political criticism of the ruling mainly concerns the fact that it is barely sustainable because the ECtHR has gone far beyond what can be accommodated within the interpretative methods that the Court has developed and which have been associated with progressive interpretation or the method of interpretation that considers the convention to be a living document. These are based on the idea that the convention should be interpreted and applied in accordance with contemporary perspectives instead of being confined to the original meaning of its provisions.

Judge Eicke states in his dissenting opinion, that he believes that the majority of judges have, through these interpretative methods, gone far beyond the scope of international law and the interpretative perspectives applicable in that field.[25] This applies in particular to the Court's interpretation of Article 34 of the Convention on the right of application of NGOs, as well as Article 8 and possibly Article 2 of the Convention. With the latter, the Court has created new rights and imposed on the contracting states the obligation to enact and enforce laws and regulations intended to mitigate the negative effects of climate change on their citizens.[26] Other critics believe that the judgment undermines the fundamental principles

[24] *KlimaSeniorinnen*, dissenting opinion, p. 233.
[25] *KlimaSeniorinnen*, dissenting opinion, para. 3.
[26] *Ibid.*, para. 4.

of the separation of powers by allowing lawsuits by NGOs regarding legislation or the lack thereof *in abstracto*.[27]

Towards the end of his dissenting opinion, Eicke discusses the potential impact of the majority's decision. He believes that the court, through its ruling, raises false hopes that legal action in the courts can accelerate states' adoption of necessary climate measures. On the contrary, he warns that the new rights and corresponding obligations, essentially created by the majority based on treaty provisions, could lead to a situation where government efforts are increasingly directed towards defending their actions or inaction in Court. This, in turn, could divert attention away from what they should actually be doing: continuing their work on enacting necessary legislation and implementing measures to enforce it.[28]

Finally, the criticism pertains to the powers of the ECtHR. The Court, through its judgment, has encroached upon the self-determination and sovereignty of states and interfered in matters that rightly fall within the jurisdiction of the states themselves. These are matters that should be resolved domestically based on legitimate political and democratic decision-making processes. This position towards the judgment is most clearly reflected in the response of the Swiss parliament, which on June 12, 2024, passed a resolution – by 111 votes to 72 – stating that the judges in the case had exceeded their authority, that Switzerland had done enough regarding climate issues, and that it did not intend to comply with the judgment. Additionally, the parliament accuses the ECtHR of inappropriate and excessive judicial activism.[29] The parliamentary resolution has been criticized, with claims that it is poorly aligned with the concept of the rule of law. The position of the Swiss parliament could contribute to the erosion of the Strasbourg system for the protection of human rights in Europe if states begin to selectively accept or reject the Court's rulings based on their own interests. The resolution sets an unfortunate precedent for other states. Rosmarie Wydler-Wälti, vice president of the organization *KlimaSeniorinnen Schweiz*, stated that she was astonished by the resolution, which she found unbecoming of a parliament in a country where rights are protected by a constitution.[30] Furthermore, Véronique Boillet, a professor at the University of Lausanne in Switzerland, has said that the parliament's stance is inconsistent with Switzerland's traditional approach to the rulings of the ECtHR, which Swiss authorities have previously made a point of complying with. Following this resolution, one might expect greater reluctance to comply with such rulings in the future. It is also worth noting that the Committee of Ministers of the Council of Europe, which is responsible for enforcing the Court's rulings, would face significant difficulties in executing the judgment in light of Switzerland's refusal to comply. The Swiss parliament's opposition poses serious challenges, as it puts the legitimacy and standing of the Court itself at risk.[31]

---

[27] VINKEN, Moritz and MAZZOTTI, Paolo: „The First Italian Climate Judgement and the Separation of Powers: A Critical Assessment in Light of the ECtHR's *Climate Jurisprudence*, Verfblog, April 22, 2024. Available at https://verfassungsblog.de/the-first-italian-climate-judgement-and-the-separation-of-powers/ (accessed June 20, 2025), pp. 3–4.

[28] *KlimaSeniorinnen*, paras. 68–70.

[29] Die Bundesversammlung, May 29, 2024, „Erklärung des Nationalrates. Urteil des EGMR Verein KlimaSeniorinnen Schweiz u.a. vs Schweiz" 24.054, 2. See also „Bundesrat äussert sich zu EGMR-Klimaurteil kritisch", available at: https://www.srf.ch/news/schweiz/entscheid-zu-klimaseniorinnen-bundesrat-aeussert-sich-zu-egmr-klimaurteil-kritisch (accessed May 10, 2025).

[30] Ajit Niranjan: *op. cit.,* p. 2.

[31] „Assessing the Impact of KlimaSeniorinnen and Associated Rulings" (European Law Institute, June 24, 2024). Available

In discussions surrounding the judgment, it has been pointed out that part of its reasoning for recognizing the standing (right of appeal) of the organization *KlimaSeniorinnen Schweiz* relates to the idea that the group also represents the interests of future generations. The underlying idea is presumably that if nothing is done now, future generations will have to bear a heavier burden, and thus one might considered the organization as acting on behalf of future generations. What is more, a careful reading of the judgment reveals how significant role the rights of future generations play in its reasoning.[32] In the debate, the Court's arguments have been presented as reflecting the view that future generations are more likely to bear increasingly heavier burdens due to the inaction of current authorities on climate issues. This leads to a call for intergenerational burden-sharing. There is a risk that short-term interests are prioritized at the expense of the urgent need for long-term sustainability planning.[33] This supports the view that organizations such as *KlimaSeniorinnen Schweiz* should be granted standing under Article 34 of the ECHR. Possibly, this is the most significant development the judgment brings in terms of its implications for advocacy groups pushing for active measures in climate policy. It is undeniably an interesting point, but this text does not take a position on whether this approach is sufficiently grounded in the provisions of the Convention. There are, undoubtedly, divided opinions on the matter.

As to the legal critism, which admittedly cannot always easily be distinguished from purely political criticism, and primarily concerns the view that the judgment is not consistent with previous case law and, where applicable, that the reasoning is based on unreliable premises and may even be logically flawed.[34] Thus, the opinion is expressed in the dissenting opinion of the British judge, previously referred to, that the reasoning of the Court for rejecting the right of appeal of applicants no. 2-5 should likewise have led to the conclusion that the Court also rejected the organization's right of appeal, referring to the well-known principles established in earlier case law, that a person bringing a case before the court must have been personally and directly affected by climate change or the authorities' inaction in addressing it.

The Court's expansion of the standing of organizations has no basis in the wording of the Convention, which only provides for the standing of organizations if they themselves can be considered victims of a violation. In reality, this equates to the Court legitimizing *actio popularis* in cases concerning climate change, even though the Court has repeatedly stressed that this is not the case.[35] In this regard, judge Eicke addresses what may be considered the most important issue in the judgment, and the one most likely to provoke legal disputes, if and when states undertake to amend their procedural legislation to comply with the requirements stemming from the judgment. This issue concerns how to reconcile the Court's approach of denying applicants no. 2-5 the right of appeal as individuals on the grounds that they could

at: https://www.europeanlawinstitute.eu/news-events/news-contd/news/assessing-the-impact-of-klimaseniorinnen-and-associated-rulings-1/?no_cache=1&cHash=e882f804044079e26a9ed27283e06c26 (accessed May 20, 2025).

[32] NOLAN, Aoife: "Inter-generational Equity, Future Generations and Democracy in the European Court of Human Rights' Klimaseniorinnen Decision", April 15, 2024. Available at https://www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision/ (accessed June 6, 2025) and LETSAS, George: "Did the Court in Klimaseniorinnen create an action popularis", May 13, 2024. Available at https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/ (accessed June 6, 2025).

[33] Aoife Nolan, *op. cit.*

[34] George Letsas, *op. cit*.

[35] *KlimaSeniorinnen*, dissenting opinion, paras. 43–45.

not be considered victims, while at the same time granting standing to the organization, even though it acts as a representative of its members or others, without these "represented persons" qualifying as actual victims in the sense of the Convention. As previously noted, the Court did not consider the organization to be pursuing the case due to a violation it had itself suffered, but rather acting as a kind of representative for its members and other individuals, in light of their interests and the potential negative effects of climate change on them. One can argue that this represents a clear contradiction, as it invites the question: after applicants no. 2-5 were denied victim status, and it was found that Article 8 of the ECHR had been violated, who are then the actual victims of that violation? This leads to the pressing question of whether the Court, contrary to its stated intention, has in fact opened the door to *actio popularis* (public interest litigation by those not directly affected).[36]

Regarding Article 8 of the ECHR, and, where applicable, Article 2, judge Eicke believes that the majority has created new rights for individuals for protection against harm caused by climate change, and that this has in turn established a corresponding obligation on the state to take adequate measures to protect individuals from such harm. He goes on to argue that this outcome is not in line with previous judgments, which dealt with state action or inaction in enacting legislation and taking general measures under that legislation; cases in which the Court has traditionally granted states a wide margin of appreciation. This judgment, however, significantly narrows that margin.[37]

6. Concluding Remarks

This judgement marks a landmark decision on the intersection of human rights and climate issues. Furthermore, it symbolizes a significant victory for civil society organizations advocating environmental protection and human rights, especially those demanding more robust state action on climate change. Legally, the judgment represents a departure from established jurisprudence, introducing transformative principles in human rights law. It is evident from the Court's reasoning that its conclusion rests more on human rights and environmental policy considerations than on strict legal reasoning. This reflects an effort to expand judicial avenues for environmental organizations seeking to assert ECHR rights in cases of alleged state inaction on climate change, particularly regarding its adverse effects on human health and well-being.

Although environmentalists have welcomed the ruling, it is controversial, both legally and politically. Critics argue, among other things, that the ECtHR has overstepped its mandate, intervening in matters that do not fall within its purview, at the expense of state sovereignty. The position of the Swiss Parliament reflects part of this criticism. In June 2024, it passed a resolution expressing the view that the judges in the case had exceeded their authority, stating that Switzerland had done enough in terms of climate action, and that the country would not comply with the judgment. Moreover, the ECtHR has been accused of unwarranted and excessive judicial activism. This stance by the Parliament diverges from Switzerland's previous approach to ECtHR judgments. Such disagreement could lead to tensions and difficulties, as the legitimacy and standing of the Court may be called into question.

[36] George Letsas, *op. cit.*

[37] *KlimaSeniorinnen*, dissenting opinion, paras. 65–66.

Currently there are four climate-related complaints pending before the ECtHR[38] and it will be very interesting to see whether the conditions, considerations, and principles established in the *KlimaSeniorinnen* case will continue to be applied and how they will develop, both within the Court and in other forums. For instance, the approach in the case, particularly concerning the criteria for victim status and individual applicants' access to the Court, does not appear to be complete and may be subject to future revision.[39]

That said, it must be acknowledged that this case constitutes a significant development which may serve as substantial support for environmental organizations committed to the promotion of human rights and climate-related issues. By connecting state obligations to protect human rights with those to address climate change, the judgment reaffirms the critical role of human rights in shaping and enforcing climate change law, marking a milestone for future climate change legal action.

[38] *Greenpeace Nordic and Others v Norway*, App No 34068/21 (ECtHR, pending); *The Norwegian Grandparents' Climate Campaign and Others v Norway*, App No 19026/21 (ECtHR, pending); *Engels v Germany*, App No 46906/22 (ECtHR, pending); *Müllner v Austria*, App No 18859/21 (ECtHR, pending).

[39] For instance the case of Müllner v Austria offers the Court an opportunity to revise these concepts. *Müllner v Austria, op. cit. Müllner v Austria.*