



## Dispatch

# Human Rights Approach for Climate Justice – *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*

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### Introduction – Human Rights Approach for Climate Justice

The European Court of Human Rights (ECHR) ruling in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is a considerable innovation in associating climate change with human rights and fundamentally challenges the existing legal structure. The case was brought to the Court on November 26, 2020, by 2,000 members of an association of elderly women, the Swiss Elders for Climate Protection, who claimed that Switzerland failed to protect the climate and hence breached Articles 2 and 8 of the European Convention on Human Rights, and that the procedure in the case was flawed under Article 6. Despite acknowledging the structural prejudice of climate change and the state's duties to avoid foreseeable damage, the Court used the margin of appreciation, a legal doctrine that allows national authorities some discretion in interpreting and applying the ECHR, to justify Switzerland's discretion.

Does this approach undermine the protection of human rights when confronted with transnational environmental challenges? While the judgment recognizes the long-term effects of climate harm through the principle of intergenerational equity, how can this principle be implemented without clear directions? Also, the procedural deficiencies under Article 6 expose the challenges domestic courts face in dealing with scientific evidence and ensuring justice for vulnerable communities. Can human rights law adapt to address the diffuse and systemic nature of climate harm, or does it require a

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more integrated framework with international environmental law? These questions show that while this historic decision can change the world and provide climate justice, it also can fail when it comes to these goals.

Climate change is one of the most important problems of the present and the future (Leichenko & O'Brien, 2024). Its impacts raise legal issues relating to what states owe individuals in matters regarding environmental harm (De Vido, 2024, Ray & Cooper, 2024). The case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is a landmark decision on this matter because it is the first documented case of the ECHR trying climate change as a human rights issue. The applicants in this case were an association of senior women and several individual members and who complained that Switzerland had not done enough to curb greenhouse gas (GHG) emissions. They said this failure breached their rights under Article 2: Right to Life of the ECHR and Article 8: Right to Private and Family Life, and argued that elderly women are most vulnerable to the effects of heat waves due to climate change. The applicants claimed that they have the status of victims according to Article 34 of the Convention, and that the Swiss government failed in its positive duty to promote and protect their rights. In addition, they made procedural complaints under Article 6 stating that they had been deprived of an adequate opportunity to present their case effectively. The domestic courts in Switzerland dismissed the case on the basis that the applicants were insufficiently affected. The courts dismissed them as mere grievances of climate policy without reference to violations of rights. The applicants then approached the ECHR, and the Grand Chamber evaluated if the applicants were victims under the Convention. The Grand Chamber also asked whether Switzerland has complied with its obligations to reduce climate change risks.

It was an important and landmark case that looked at how human rights law can be used by international courts in managing international environmental challenges. The case raises critical issues concerning justice, rights, duties of states and the courts, and the place of law in climate change policies. This dispatch dissects the judgment based on its procedural and substantive components (i.e., victim status recognition, state responsibility for climate change, and future environmental litigation), and addresses the limits of combating climate change using a human rights perspective.

### **Case Preface**

This case emerged from what has been described as shortcomings in Switzerland's climate agenda and the effects of these shortcomings on sensitive communities. The applicants, most of whom are over 75 years of age, argued that older women are at a higher risk of suffering the health effects of climate change, noting that heat waves have become more common due to global warming. They also argued that the Swiss government did not take adequate measures to decrease GHG emissions and climate change's negative impacts.

They claimed that this failure was a breach of their rights under the European Convention on Human Rights, particularly Articles 2 and 8 and argued that the state had a duty to safeguard them from harms resulting from climate change that were both foreseeable and serious.

## **Proceedings of the Case**

### *Domestic Proceedings*

At the domestic level, the applicants used several legal instruments to force the Swiss authorities to increase their climate change measures. They approached the Federal Council, the Federal Department of the Environment Transport Energy and Communications (DETEC), and the Federal Office for the Environment. These authorities were urged to implement measures to satisfy Switzerland's global climate obligations, especially under the Paris Accord (2015), whose objective is to ensure global average temperature rise to not more than 2°C above pre-industrial levels. They also called on the authorities to adopt measures to limit GHG emissions to at least 25% below 1990 levels by 2020. The applicants claimed that inaction jeopardized their lives and health especially given that scientific evidence shows heat waves affect elderly women disproportionately. In April 2017, DETEC dismissed the applicants' application because they lacked *locus standi* (a legal term that refers to a party's right to bring or defend a legal action or application in court). Thus, the agency concluded that the applicants' complaints were not about their rights but rather complaints about governmental policy. The applicants initially received this decision at the Federal Administrative Court (FAC) in November 27, 2018. The applicants then appealed to the Swiss Federal Supreme Court (FSC) saying that the FAC had not fully considered their arguments and evidence. Climate heating was criticized as especially dangerous for older women, and they provided medical and scientific data to back their claims. Nevertheless, the FSC quashed their appeal in May 2020, agreed with the FAC, and held that the applicants have no victim status, and that their allegations failed to satisfy the admissibility criteria under Swiss law. The FSC also dismissed the applicants' arguments for stronger climate measures saying that such matters should be addressed politically not legally.

### *European Court of Human Rights Proceedings*

After having their claims dismissed in Switzerland, the applicants turned to the ECHR in November 2020. They based their case on Articles 2 and 8 of the Convention claiming that Switzerland had not done enough in terms of climate policies to protect their right to life and their right to respect for their private

and family life. They also relied on Article 6 (right to a fair trial) and Article 13 (right to an effective remedy), which claimed that the Swiss courts never analysed their cases or provided justice. The applicants claimed to be victims within the meaning of Article 34 of the Convention; they stressed that this association embodied a particularly endangered category of older women who experienced adverse health effects of heat waves caused by climate change. They also pointed out the inability of Switzerland to make adequate climate change mitigation, and the inability of the government to reduce domestic emission goals or come up with an effective legal regime to address climate change. The Grand Chamber of the ECHR decided to consider the case. It raised three principal questions for its consideration: whether the applicants could be regarded as victims under Article 34; whether the Swiss breached their positive obligations under Articles 2 and 8; and whether the domestic proceedings met the procedural requirements of Article 6. In a way, this case was symbolic of the transition from environmental law as something that applied to nature but not humans, to draw inferences between the environment and human rights, as it was the first climate change case that was a Grand Chamber appeal.

### **Questions of Law**

In this case, the ECHR addressed several cardinal legal issues. These issues raised the question of the appropriate approach of the European Convention on Human Rights (ECHR) in the context of climate change, and the impact on people's rights. Concerning such key themes, the Grand Chamber was formed to consider the recognition of victim status under Article 34, the scope of the state's positive obligations under Articles 2 and 8, and adequacy of procedural safeguards under Article 6. One of the main issues with the case was to determine whether the applicants could be considered victims according to Article 34 of the Convention. The applicants included the same Swiss association of older women and several individuals who had unsuccessfully approached the Swiss government. Now they claimed that the Swiss government did not have sufficient climate policies to protect their health, especially during the worsening heat waves. Once again, the applicants substantiated their arguments with medical and scientific reports explaining why older women are especially at risk of extreme heat due to climate change. They argued that this particular and inevitable harm created a requisite nexus with the allegations of violations of Articles 2 and 8 that related to their particular situations, and pointed out that Swiss domestic courts had dismissed their claims, labelling them an *actio popularis* (an action brought by a member of the public in the interest of public order) instead of a complaint against certain rights violations. The Grand Chamber was therefore left with the question of whether the applicants' situation and documentation were sufficient to qualify them as victims under the Convention.

The second – and very important – question was whether Switzerland had violated its positive obligations under Articles 2 and 8 by not adopting enough measures to combat climate change. Under Article 2, which deals with the right to life, the applicants claimed that the Swiss government failed to protect their health and right to life by having negligent climate policies that posed foreseeable risks to human life. This was also an applied right, as enshrined in Article 8 of the European Convention on Human Rights, which refers to the right to respect for private and family life. Article 6 on procedural rights also played a very important role in the case; the applicants claimed that the Swiss courts deprived them of an effective remedy by rejecting their claims on technicalities, and that such an approach deprived them of the right to have their allegations considered and decided on fairly. The Grand Chamber had to decide whether the domestic courts had sufficiently protected the applicants' procedural rights in the context of climate-related litigation. The case also brought up the issue of state autonomy in policymaking and the extent of judicial activism in environmental affairs. Switzerland argued that its climate policies are within range of appreciation in the framework of the Convention, noting that the measures are still in the process of balancing economic, social, and environmental factors. The Grand Chamber had to examine if in this regard it was appropriate to intervene and to what extent the judiciary can sanction states for failing to meet their international climate obligations, including those under the Paris Agreement. This issue discussed the changing function of human rights courts in relation to current problems such as climate change, which have systemic and collective characteristics that cannot be solved with the help of conventional legal frameworks. This case also set out how climate litigation impacts and may shape international human rights law.

### **The Grand Chamber Judgment**

The ECHR held its judgment on April 9, 2024, and several landmark legal points were recognized in the judgment.

#### *Victim Status under Article 34*

The applicants could be regarded as victims within the provision of Article 34 of the Convention. The Grand Chamber further explained that a claimant must have sufficient link and immediate proximity to the alleged victimization. This principle bars the Court from hearing *actio popularis* cases that are actions brought in the interests of the public rather than in the interest of the affected individual. In this case, the Court dismissed the assumption that the individual applicants, all elderly women, were able to prove that climate change affects their rights under the Convention directly. This aspect of the judgment reflects

a shift in climate litigation concerning the appreciation of collective and intergenerational concerns.

#### *Obligations under Articles 2 and 8*

The Grand Chamber then turned to the question of whether the Swiss State had violated its positive obligations as provided under Articles 2 and 8 of the Convention. The Court acknowledged that climate change presents a danger to life, health, and well-being especially to vulnerable persons. They confirmed that Article 8 covers the right to receive effective protection from state agencies against serious threats of environmental degradation including the impacts of climate change (Preston 2024). However, the Grand Chamber pointed out that states have considerable discretion in choosing the ways and means to achieve climate targets. Even though Switzerland's climate policies were considered not ambitious enough and not sufficiently urgent, the Court did not consider them to violate Articles 2 and 8. It opined that although the measures have some imperfections, the Swiss government was well within its discretion to take those measures.

#### *Procedural Rights under Article 6*

The applicants also complained that their Article 6 rights had been breached because Swiss courts rejected their claims without proper consideration of the merits of their cases. The Grand Chamber maintained a clear and crisp appreciation of procedural ties (a part of the criminal procedure process in which a defendant admits to committing additional offenses that may be considered when sentencing them) as the means of delivering justice especially while dealing with enormous and systematic troubles like climate change. In particular, it determined that the Swiss courts had not sufficiently discussed the applicants' arguments or given sufficient justification for rejecting them. Applicants cannot be deprived of their rights due to procedural problems. The Grand Chamber's finding in Article 6 shows that procedural justice is vital to meeting climate change-related challenges.

#### *Implications for Climate Litigation*

The Grand Chamber's judgment is highly consequential and portends the future of climate litigation not only in Europe but beyond its borders. The recognition of the association's standing is an indication of a new trend in environmental law focusing on collective rights and intergeneration equity. At the same time, the judgment also re-establishes the fact that states still enjoy considerable leeway as to how they can fulfil their climate commitments. Even

though the Grand Chamber did not establish a violation of Articles 2 or 8, its decision suggests that states must take affirmative measures to mitigate the threats of climate change. Being the first case on climate change this decision will guide subsequent ECHR cases that aim to establish a connection between environmental responsibility and human rights.

### **Critical Analysis**

The judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is a precedent that places climate change in the context of human rights law. It also exposes a lack of originality in judicial analysis and the use of legal concepts and ideas. The Grand Chamber's reliance on the doctrine of margin of appreciation (a legal principle that allows countries to have different interpretations of human rights issues) raises an uncomfortable question: does this doctrine, which was meant to protect national sovereignty in delicate issues, turn into an excuse for complacency in the presence of global issues such as climate change? This is evident through the Grand Chamber's recognition that even if Switzerland's climate policies were insufficient they still did not breach the acceptable limit of harm to others. Should the severity of climate change that affects borders and generations not make the Court reconsider its approach to state discretion? Can the margin of appreciation be reconciled with the principles of universal human rights when the risks of inaction are so severe? Equally noticeable is the Court's focus on intergenerational equity without offering any criteria that states could use to implement the principle. How can future litigants prevent this concept, which is great in its conception, from becoming a mere slogan? Is it possible that a clearer recognition of states' duties for the protection of climate risks to future generations would enhance the effectiveness of this principle in the context of the law? Moreover, the judgment also confirms the Article 34 standing for the association, which is an essential key to the collective climate litigation, but it raises questions about the extent of such standing. Does this precedent apply to other forms of vulnerable populations, or is it only applicable to those groups with clearly defined memberships? How should the courts reconcile the general welfare of humanity with the specific claims of several identifiable victims especially where the injury is structural rather than personal?

The procedural deficiencies mentioned under Article 6 also exemplify how domestic legal frameworks fail to address the scientific aspects of climate litigation. Should domestic courts be required to incorporate independent scientific advice to improve their ability to address climate cases impartially? How can procedural justice be enhanced so that marginalized groups can effectively seek redress for systemic environmental injustice? Finally, the judgment's silence on the enforceability of international obligations, such as those under the Paris Agreement, raises a fundamental issue: are human rights

courts capable of ensuring that states adopt the correct climate change policies or does this need a system of international environmental law?

This line of questioning proves that this decision undoubtedly establishes a major precedent for future climate litigation; but it also demonstrates that there is a need for the development of stronger legal frameworks to address the challenges of climate change. Lack of clarity and consistency in the application of human rights principles may lead to situations where such judgments are received more as political statements than as actions that would foster positive change.

## Conclusion

The judgment in this case is considered a milestone in defining the relationship between human rights and environmental law. Because the Grand Chamber of the ECHR considered both climate change and fundamental rights in its judgment, the subject has been laid down for future legal practice and academic research to build on. The decision recognizes that climate change and its effects go beyond environmental concerns and are firmly linked to the right to be protected in the sense implied in the European Convention on Human Rights. The judgment also shows that the Court has learned the positive obligations of states in the face of systematic risks, most especially ones resulting from global warming. As with all judgments, certain issues remain undecided, especially in terms of state discretion and victim status. Yet these weaknesses also create the potential for future legal evolution. The beneficial aspects of the decision are the acknowledgment of collective legal capacity, the inclusion of intergenerational justice, and the process aspects of climate justice, all of which provide a sound basis when it comes to developing climate litigation under international law. Subsequent work in law and policy should expand upon this case to consider how the links between human rights law and climate agreements can be further developed. In such a way, the principles outlined in this judgment can help to enhance the legal response to climate change at the global level.

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