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Wewerinke - Singh, M.J.

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Climate Protection Obligations under the European Convention on Human Rights: The *KlimaSeniorinnen Schweiz* and *Others v Switzerland* Judgment

ECtHR 9 April 2024, No. 53600/20, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*

Margaretha Wewerinke-Singh*[†] 

*University of Amsterdam, The Netherlands and The University of Fiji, Fiji,
email: m.j.wewerinke@uva.nl

INTRODUCTION

On 9 April 2024, the Grand Chamber of the European Court of Human Rights (the Court) delivered its much-anticipated judgment in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*.¹ The case, brought by a Swiss association of elderly women and four individual applicants, alleged that Switzerland's inadequate action on climate change violated their rights under the European Convention on Human Rights (the ECHR). In a landmark ruling, the Court for the first time found a violation of the ECHR based on a state's failure to take sufficient measures to mitigate climate change.

The *KlimaSeniorinnen* judgment is significant on several fronts. First, it clarifies that climate change falls squarely within the scope of the ECHR by

[†]The author served as an intervenor in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* alongside the Center for International Environmental Law (CIEL). However, this case note is written in her personal capacity.

¹ECtHR 9 April 2024, No. 53600/20, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*.

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virtue of its impacts on human rights, and that states have positive obligations under Article 8 (right to respect for private and family life) to address these impacts. Second, it affirms the critical role of domestic courts in ensuring access to justice in climate change matters under Article 6 (right to a fair trial). Third, by granting standing to the applicant association but denying it to the individual applicants, the Court grappled with the complex question of victim status in the context of diffuse, cross-border harms. These are important constitutional developments for Europe given the interplay between the EU legal order, the Council of Europe's human rights regime, and domestic courts within EU member states which are increasingly confronted with rights-based climate cases.²

Although *KlimaSeniorinnen* concerns Switzerland (which is not an EU member state), the Court's reasoning applies to all Contracting Parties – including those in the EU – by virtue of their shared obligations under the ECHR. Nevertheless, a critical question arises: would compliance with existing EU climate laws sufficiently satisfy the positive obligations articulated by the Court under Article 8? As domestic cases such as *Urgenda v The Netherlands*³ illustrate, compliance with EU standards does not automatically shield EU member states from judicial findings of ECHR violations, raising crucial questions about whether current EU climate governance meets the Court's requirements for proactive, science-based climate mitigation.

Decided alongside two other climate cases – *Duarte Agostinho and Others v Portugal and 32 Other States*⁴ and *Carême v France*⁵ – which the Court dismissed as inadmissible, *KlimaSeniorinnen* sheds light on the prospects of pending and future climate cases before domestic courts and at the Court itself. Taken together, these decisions delineate both the substantive obligations that states may bear under the ECHR to mitigate climate harms and the procedural hurdles that applicants must surmount in order to bring climate claims before the Court. The tension between the Court's recognition of a strong substantive obligation under Article 8 on one hand and its strict admissibility approach on the other exemplifies both the potential and the

²See e.g. E. Colombo, 'Principles of EU law in Climate Litigation', *China-EU Law Journal* (2024); H. Keller and C. Heri, 'The Future is Now: Climate Cases before the ECtHR', 40(1) *Nordic Journal of Human Rights* (2022) p. 153.

³*The State of the Netherlands v Urgenda Foundation*, Dutch Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2007.

⁴ECtHR 9 April 2024, No. 39371/20, *Duarte Agostinho and Others v Portugal and 32 Other States*.

⁵ECtHR 9 April 2024, No. 7189/21, *Carême v France*.

limitations of seeking wide-ranging climate action through the ECHR. Developments following the judgment – including the Swiss Government’s contested ‘Action Report’ and subsequent scrutiny by the Committee of Ministers – demonstrate how implementation debates before Strasbourg’s political organ can shape the real-world force of the Court’s decision.

This case note first sets out the background and key facts of the *KlimaSeniorinnen* case. It then analyses the Court’s reasoning by examining in turn: (1) the question of standing; (2) the newly clarified positive obligations under Article 8; (3) the Court’s stance on access to justice under Article 6; (4) Judge Eicke’s opinion, which provides a critical counterpoint to the majority’s approach and raises questions about the democratic legitimacy of judicial intervention in climate policy. Next, the note places *KlimaSeniorinnen* in context by comparing it to the Court’s strict approach in *Duarte Agostinho* and *Carême*. It then discusses implementation in Switzerland, with reference to Swiss legislative developments and the oversight role of the Committee of Ministers. Finally, it explores future implications – including how domestic and European courts may respond – and touches on the gender dimension largely left unresolved in this pioneering case.

BACKGROUND AND KEY FACTS

The *KlimaSeniorinnen* case has its origins in the growing frustration of Swiss civil society with the pace and ambition of the state’s climate change mitigation efforts. Switzerland, while not among the world’s top emitters in absolute terms, has a sizeable carbon footprint per capita, and the country’s alpine geography renders it highly vulnerable to the effects of global warming (e.g. melting glaciers, heatwaves).⁶

In 2016, a group of over 1,000 Swiss women of pensionable age formed the *KlimaSeniorinnen Schweiz* association.⁷ As the name (German for ‘Senior Women for Climate Protection Switzerland’) suggests, the association aimed to represent the interests of elderly women, arguing that they are disproportionately affected by climate change due to their age and gender. Heatwaves, in particular,

⁶‘Impulse für eine Klimaangepasste Schweiz’, *Bundesamt für Umwelt*, 2023, <https://www.bafu.admin.ch/bafu/en/home/topics/climate/publications-studies/publications/impulse-fuer-klimaangepasste-schweiz.html>, visited 26 May 2025; M. Kammerer et al., ‘Climate Governance and Federalism in Switzerland’, in A. Fenna et al. (eds.), *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis* (Cambridge University Press 2023) Ch. 14 at p. 288.

⁷‘About us’, *KlimaSeniorinnen*, 2021, <https://klimasenioren.ch/en/about-us/>, visited 26 May 2025.

pose acute risks to the health and well-being of older persons, as tragically evidenced by the spike in excess deaths among the elderly during the summer 2003 and 2015 heatwaves in Switzerland.⁸

Concerned that Switzerland was not on track to meet its climate targets, and that the state's inadequate action was putting their rights and those of future generations at risk, KlimaSeniorinnen first petitioned the Swiss Government directly in November 2016.⁹ The association called on the state to take more stringent measures to reduce greenhouse gas emissions in line with limiting global warming to 1.5°C above pre-industrial levels, the more ambitious goal of the Paris Agreement.¹⁰

Having received no satisfactory response, KlimaSeniorinnen, joined by four individual members of the association aged 75 and older, lodged a complaint with the Swiss Federal Administrative Court in May 2017.¹¹ They argued that the state's failure to take the necessary mitigation measures violated their rights to life and health protected by the Swiss Constitution and Articles 2 and 8 of the ECHR. In November 2018, the Federal Administrative Court dismissed the complaint, finding that the applicants were not sufficiently affected by the state's acts or omissions to have victim status under Article 34 of the ECHR.¹²

The applicants then appealed to the Swiss Federal Supreme Court. In a May 2020 judgment, the Supreme Court upheld the lower court's decision.¹³ It agreed that the applicants had not demonstrated that their rights were or risked being affected with sufficient intensity by the alleged omissions, and that they lacked victim status under Article 34 of the ECHR.¹⁴ As such, their complaint was likened to an *actio popularis*, seeking an abstract review of the state's climate policies, which is inadmissible under the Swiss legal order.

⁸M.S. Ragetti et al., 'Hitze und Gesundheit', *National Center for Climate Services*, 2022, <https://www.nccs.admin.ch/nccs/de/home/massnahmen/pak/projektphase2/pilotprojekte-zur-anpassung-an-den-klimawandel-cluster-umgang-/a-06-hitze-und-gesundheit.html>, visited 26 May 2025; *Verein KlimaSeniorinnen*, *supra* n. 1, paras. 73-74.

⁹*Ibid.*, para. 22 of the application to the ECtHR.

¹⁰Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. 54113.

¹¹*Verein KlimaSeniorinnen*, *supra* n. 1, para. 32.

¹²*Verein KlimaSeniorinnen Schweiz et al. v Federal Department of the Environment, Transport, Energy and Communications*, Swiss Federal Administrative Court, Section 1C, Judgment A-2992/2017 of 27 November 2018.

¹³*Verein KlimaSeniorinnen Schweiz et al. v Federal Department of the Environment, Transport, Energy and Communications*, Swiss Federal Supreme Court, Public Law Division I, Judgment 1C_37/2019 of 5 May 2020.

¹⁴*Ibid.*, para. 5.4.

Having exhausted domestic remedies, the applicants lodged an application with the Court in November 2020. Before the Strasbourg Court, they alleged violations of Articles 2 and 8 of the ECHR due to Switzerland's failure to take the necessary measures to protect them from the risk of heatwaves and other adverse impacts of climate change. They also claimed a breach of their Article 6 rights on account of the domestic courts' refusal to examine the merits of their complaint.¹⁵

STANDING AND ADMISSIBILITY: ASSOCIATION VERSUS INDIVIDUALS

A critical issue in the *KlimaSeniorinnen* case was the Court's treatment of standing (*locus standi*) for the association versus the individual applicants. Article 34 of the ECHR requires that an applicant be able to claim to be a victim of a violation of the ECHR rights. The Court has consistently held that this criterion cannot be applied in the abstract and must be assessed in light of the specific circumstances of each case.¹⁶

The Court suggested that in the context of climate change, the traditional victim status requirements posed challenges due to the global and diffuse nature of the harm [424-426]. While everyone may be affected by climate change to some degree, granting standing to all would risk transforming the ECHR into an *actio popularis* mechanism, which is precluded by Article 34 [483-484]. Faced with this dilemma, the Court took an innovative approach, distinguishing between the standing of individuals and that of associations. With regard to the individual applicants, the Court applied a strict test, requiring them to demonstrate that they were 'subject to a high intensity of exposure to the adverse effects of climate change' and that there was a 'pressing need to ensure [their] individual protection' [487-488]. As the individual applicants had not shown that they were exposed to climate impacts with a sufficient degree of intensity, the Court held that they did not have victim status [534-535].

However, the Court took a markedly different stance on the standing of the applicant association. Recognising the 'evolution in contemporary society as regards recognition of the importance of associations' [497] and the 'particular relevance of collective action in the context of climate change' [499], the Court set a lower bar for associational standing. It held that an association may have standing where it: (a) is lawfully established; (b) has a statutory aim of defending its members' rights against climate change; and (c) can be regarded as genuinely qualified and representative of affected individuals [502]. Applying these criteria,

¹⁵New Application: *KlimaSeniorinnen v Switzerland and Request Under Rule 41 (Priority)*, *Climatecasechart*, 2020, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20201126_Application-no.-5360020_application.pdf, visited 26 May 2025.

¹⁶See e.g. ECtHR 29 April 2008, No. 13378/05, *Burden v United Kingdom*, para. 33.

the Court found that the KlimaSeniorinnen association had standing to bring the complaint [524-526].¹⁷ Importantly, the Court held that the association did not need to demonstrate that its individual members would themselves meet the victim status requirements for natural persons [502]. While this arguably relaxes the usual standing requirements for associations, the Court insisted it was not opening the door to pure *actio popularis* or general interest actions [500]. Rather, it underscored the ‘evolution of civil society’s role’ in addressing climate harms [602].

The *Cannavacciuolo and Others v Italy*¹⁸ judgment indicates that this associational standing approach may be limited to climate-change litigation rather than extending to other types of large-scale pollution. The Court in *Cannavacciuolo* declined to relax its *locus standi* criteria for environmental NGOs seeking to challenge hazardous waste dumping in the Campania region, even though the environmental harm there is severe and systematic [222, 249, 296]. It noted that *KlimaSeniorinnen*’s broader approach to associational standing had been justified by ‘the specific feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing’.¹⁹ This signals that while the Court set a groundbreaking precedent for associational standing in climate suits, it might maintain stricter conventional tests in other environmental contexts.²⁰ Critics highlight the inconsistency of such a distinction, given that pollution can also pose global and transgenerational threats.²¹

THE COURT’S REASONING AND LEGAL PRINCIPLES APPLIED

Because the association’s complaint was admitted, the Court proceeded to examine the substance of the claims (whereas the individual applicants, having

¹⁷It is notable that the Court did not explain in what sense the association was ‘representative’ of affected individuals, thus introducing uncertainty about how or when this criterion may be met in other cases – including with regard to diffuse categories such as future generations.

¹⁸ECtHR 30 January 2025, Nos. 51567/14 and 3 others, *Cannavacciuolo and Others v Italy*.

¹⁹*KlimaSeniorinnen* 498-499, cited in *ibid.*, para 220-222.

²⁰As applied in e.g. ECtHR 24 January 2019, Nos. 54414/13 and 54264/15, *Cordella and Others v Italy*.

²¹E. Krajnyák, ‘Up in Smoke? Victim Status in Environmental Litigation before the ECtHR’, *EJIL Talk*, 14 March 2025, <https://www.ejiltalk.org/up-in-smoke-victim-status-in-environmental-litigation-before-the-ecthr/>, visited 26 May 2025; A. Hösli and M. Rehm, ‘Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: the European Court of Human Rights’ Answer to Climate Change’, 14(3-4) *Climate Law* (2024) p. 263. See also *Cannavacciuolo*, *supra* n. 18, concurring opinion of Judge Krenč, para. 4 and partly concurring, partly dissenting opinion of Judge Serghides, para. 2.

been found inadmissible, played no further role in the merits). The Grand Chamber focused its analysis on Article 8, with the claim under Article 2 (right to life) largely absorbed into the Article 8 analysis.²²

Positive obligations under Article 8 of the ECHR

The central question before the Court was whether Switzerland's alleged failure to take sufficient measures to mitigate climate change violated the applicants' rights under Articles 2 and 8 of the ECHR. The Court began by reaffirming that neither Article 2 nor Article 8 contains an explicit right to a clean and quiet environment [63].²³ However, where environmental harm or risk reaches a certain threshold of severity, it may fall within the ambit of these provisions and give rise to positive obligations on the state to take appropriate steps to secure the applicants' rights.²⁴

Drawing on its well-established environmental jurisprudence,²⁵ the Court set out to determine whether the risk posed by climate change to the applicants was sufficiently serious, specific, and imminent to trigger the state's positive obligations under Article 8. In a significant development, the Court held that Article 8 encompasses 'a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life' [519].

The Court acknowledged that climate change differs in important respects from the localised, single-source environmental harms it had previously considered [414]. The global, diffuse, and cross-temporal nature of climate change impacts posed challenges for the traditional victim status and causation requirements [424-426]. Nevertheless, the Court emphasised that the 'pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights' justified adapting its approach to the specificities of the climate context [434].

Accordingly, the Court held that states have a primary duty under Article 8 to adopt legislative and regulatory frameworks specifically designed to prevent severe, foreseeable climate harms, in line with the best available scientific evidence and international climate commitments such as the Paris Agreement [545-550]. Importantly, this implies that states must define clear, science-based targets – including national carbon budgets – to achieve carbon neutrality

²²Cf *Urgenda*, *supra* n. 3, [5.2.4].

²³See e.g. ECtHR 19 February 1998, *Guerra and Others v Italy*, para. 60.

²⁴See e.g. ECtHR 9 June 2005, No. 55723/00, *Fadeyeva v Russia*, para. 68.

²⁵For a synthesis, see 'Manual on Human Rights and the Environment, 3rd edn.', *Council of Europe*, 1 February 2022, <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/-/manual-on-human-rights-and-the-environment>, visited 26 May 2025.

within specific timelines, with interim emissions reduction goals, sectoral pathways, and concrete evidence of implementation [573-574].

Applying this standard to Switzerland, the Court found that there were ‘critical lacunae’ in the authorities’ regulatory response to climate change [573]. In particular, the state had failed to quantify its national emissions budget in line with the 1.5°C temperature goal and had fallen short of meeting its own emission reduction targets for 2020 [573]. These shortcomings, coupled with the state’s failure to act promptly and consistently in developing and implementing an adequate legislative framework, amounted to a violation of its positive obligations under Article 8 [574].

The Court’s interpretation of Article 8 in *KlimaSeniorinnen* represents a significant step in its environmental jurisprudence. By linking Article 8 obligations explicitly to scientific benchmarks and global climate governance frameworks, the Court signalled that the ECHR requires states to keep pace with evolving climate science and international consensus, effectively integrating international climate law standards into European human rights obligations [545-546].²⁶ The merit of this approach is that it provides an objective basis for operationalising states’ obligations to protect human rights against climate impacts,²⁷ reflecting a broader global trend of interpreting human rights treaties in line with the scientific and political consensus on climate change.²⁸

It is notable that – in contrast with the Dutch Supreme Court in *Urgenda*²⁹ – the Court refrained from prescribing specific emission reduction targets beyond those already adopted by the state, deferring to states’ margin of

²⁶See also J. Jahn, ‘The Paris Effect Human Rights in Light of International Climate Goals and Commitments’, *Verfassungsblog*, 25 April 2024, <https://verfassungsblog.de/the-paris-effect/>, visited 26 May 2025.

²⁷At the same time, however, it should be noted that 1.5°C is not a ‘safe’ limit. See ‘Written Submission on Behalf of Our Children’s Trust, Oxfam, the Centre For Climate Repair at Cambridge, and the Centre for Child Law at the University of Pretoria’, 5 December 2022, <https://static1.squarespace.com/static/571d109b04426270152febe0/t/638e005bbf762960a67b581c/1670250592879/2022.12.05+ECtHR+Interventions+FINAL.pdf>, visited 26 May 2025.

²⁸See e.g. *Urgenda*, *supra* n. 3; *Neubauer et al. v Germany*, German Federal Constitutional Court, 24 March 2021, 1 BvR 2656/18; *Friends of the Irish Environment CLG v the Government of Ireland, Ireland and the Attorney General*, [2020] IESC 49; *VZW Klimaatzaak v Kingdom of Belgium and Others*, decision of the Court of Appeal of Brussels, 30 November 2023. See generally M. Wewerinke-Singh and L. Maxwell, ‘Human Rights’, in M. Wewerinke-Singh and S. Mead (eds.), *The Cambridge Handbook on Climate Litigation* (Cambridge University Press forthcoming); J. Peel and H.M. Osofsky, ‘A Rights Turn in Climate Change Litigation?’, 7(1) *Transnational Environmental Law* (2018) p. 37.

²⁹*Urgenda*, *supra* n. 3.

appreciation [572].³⁰ Nonetheless, it critiqued Swiss authorities for failing to translate their Paris-aligned rhetoric into a quantifiable approach via a national carbon budget [572, 573]. This demonstrates the Court's grappling with the tension between judicial deference and the urgent scientific imperative: requiring robust mitigation frameworks is essential to avoid a breach of Article 8, but states retain leeway on the exact measures to be taken.

Overall, the Court's rigorous scrutiny sets a high standard, potentially surpassing the existing ambition of current EU climate targets. Although the European Climate Law and the Fit for 55 legislative package provide a comprehensive regulatory framework with legally binding emission reduction targets (55% by 2030 and net-zero by 2050), some scientific assessments indicate that these targets may still be insufficient to limit global warming to 1.5°C and avert serious harm to human rights. Indeed, the Climate Action Tracker rates the EU's current commitments as 'insufficient', projecting that if all countries followed a similar level of ambition, global warming would exceed 2°C (closer to a 3°C trajectory).³¹ These assessments underscore that EU climate law may fall short of representing a minimum threshold for compliance with ECHR obligations, let alone providing an absolute safe harbour against Convention-based climate litigation.

Access to justice under Article 6 of the ECHR

The applicants also alleged a violation of Article 6 of the ECHR on account of the Swiss courts' refusal to examine the merits of their complaint, dismissing it as an *actio popularis*. The Court agreed, finding that the applicants had been denied their right of access to a court.

The Court first determined that Article 6 was applicable to the proceedings before the Swiss courts, as the applicants' complaint 'was directly decisive for the civil right asserted', namely their right to respect for private and family life under Article 8 [209]. In reaching this conclusion, the Court drew on the growing trend in its case law to apply Article 6 to judicial review proceedings concerning environmental decision-making where the outcome was determinative for individuals' civil rights.³²

Next, the Court considered whether the restrictions placed on the applicants' access to court pursued a legitimate aim and were proportionate. While preventing *actio popularis* claims may serve the legitimate purpose of maintaining

³⁰See also C. Blattner, 'Separation of Powers and *KlimaSeniorinnen*', *Verfassungsblog*, 30 April 2024, <https://verfassungsblog.de/separation-of-powers-and-klimaseniorinnen/>, visited 26 May 2025.

³¹Climate Action Tracker: European Union (21 November 2024 update), <https://climateactiontracker.org/countries/eu/>, visited 26 May 2025.

³²See e.g. ECtHR 27 January 2009, No. 67021/01, *Tătar v Romania*, para. 88; ECtHR 2 November 2006, No. 59909/00, ECHR 2006-XII, *Giacomelli v Italy*.

the separation of powers, the Court held that the Swiss courts had failed to engage seriously with the applicants' arguments on the merits [636]. Emphasising the 'key role which domestic courts have played and will play in climate-change litigation' [639], the Court found that the very essence of the applicants' right of access to court had been impaired [638].

This finding is striking given that most European jurisdictions, like Switzerland, traditionally bar *actio popularis* suits, requiring a direct and personal stake in the matter.³³ Indeed, the judgment itself reiterates that the ECHR system excludes general interest actions, reflecting the common principle that courts should not review laws or omissions *in abstracto* absent an individual affected [460]. Yet, by affirming the NGO's standing and censuring its exclusion by the Swiss authorities, the Court effectively signalled that Article 6 imposes minimum access-to-justice requirements that can override overly restrictive national standing rules. In other words, if domestic law would deny an arguably qualified climate claimant their 'day in court' solely for lack of a personal interest, that stance may run afoul of Article 6. This nuanced but firm approach to procedural rights could have broad ripple effects: national courts may be prompted to relax rigid standing barriers in environmental cases to avoid breaching the ECHR, subtly extending the judgment's influence beyond its Article 8 context by opening courtroom doors to well-founded climate claims.³⁴

Overall, the Court's ruling on Article 6 serves as a reminder of the indispensable role of domestic courts in ensuring the effective protection of ECHR rights in the climate change context. By signalling that restrictions on access to justice in environmental matters will be subject to scrutiny, the Court reinforced the participatory rights guaranteed by the Aarhus Convention.³⁵ Indeed, the Grand Chamber explicitly noted that the Aarhus Convention 'recognises that every person has the right to live in an environment adequate to his or her health and well-being' [490] and it emphasised the important role NGOs play in environmental protection [491]. The Court found it 'pertinent to have regard to the Aarhus Convention' when devising the criteria for an association's standing in climate change litigation [501]. By affirming and applying these principles, the Court effectively paved the way for further rights-based climate litigation at the national level. As noted below, an open-ended question is to what extent this approach is

³³See also L. Besselink, 'The Actio Popularis in "Verein KlimaSeniorinnen Schweiz" Climate Jurisprudence between Strasbourg and The Hague', *ACLPA*, 29 April 2024, <https://aclpa.uva.nl/en/content/news/2024/04/blog-leonard-besselink.html#>, visited 26 May 2025.

³⁴Ibid.

³⁵Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters', *UNECE*, 25 June 1998, <https://unece.org/DAM/env/pp/documents/cep43e.pdf>, visited 26 May 2025.

applicable to environmental or fundamental rights cases more generally, or confined to cases concerning climate change.

Methodological tensions: separate opinion of Judge Eicke

The separate opinion of Judge Eicke in *KlimaSeniorinnen* offers a critical counterpoint to the majority's interpretation of the ECHR in the climate change context. At the heart of Judge Eicke's dissent was his view that the majority had overstepped the proper role of the Court by creating new obligations under the ECHR that were not grounded in the text of the ECHR or the intention of the contracting parties. In his view, the majority's approach amounted to 'judicial legislation' and exceeded the limits of permissible evolutive interpretation [3-4].

Judge Eicke took particular issue with three aspects of the majority's reasoning. First, he criticised the majority's expansion of victim status for associations which, in his view, risked transforming the ECHR into an *actio popularis* mechanism [44-45]. Second, he argued that the majority had, in effect, created a new right to a clean and healthy environment under Article 8, thus exceeding the Court's interpretative mandate [59-61]. Third, he disagreed with the majority's recognition of a positive obligation on states to mitigate climate change under Article 8, highlighting the principle of subsidiarity: democratically elected bodies, not international courts, should set climate policy [65-67].

Judge Eicke's opinion speaks to ongoing tensions about the role of the judiciary in shaping climate policy. Some commentators have echoed his concern, warning that the Court's approach might erode democratic legitimacy by displacing parliamentary debate on complex environmental and economic choices.³⁶ In the view of this author, however, the Court's restraint – it did not dictate a specific emissions target – mitigates separation-of-powers concerns. Indeed, subsequent developments show that states remain free to design their climate strategies within certain Convention-compatible limits. Critics of the separate opinion maintain that judicial intervention is necessary precisely because political branches have so far failed to curb the existential threat of climate change.³⁷

³⁶See D. Gifford, 'Climate Change and the Public Law Model of Torts Reinvigorating Judicial Restraint Doctrines', 62 *Southern California Law Review* (2011) p. 202; L. Burgers, 'Should Judges Make Climate Change Law?', 9(1) *Transnational Environmental Law* (2020) p. 74.

³⁷C. Eckes, "It's the Democracy, Stupid!" In Defence of *KlimaSeniorinnen*', 25 *ERA Forum* (2025) p. 451, referencing arguments that courts must fill the void left by executive/legislative inaction on climate. See also C. Heri, 'Legal Imagination, and the Turn to Rights in Climate Litigation: A Rejoinder to Zahar', *EJIL Talk*, 6 October 2022, <https://www.ejiltalk.org/legal-imagination-and-the-turn-to-rights-in-climate-litigation-a-rejoinder-to-zahar/>, visited 26 May 2025.

A further methodological tension concerns the wide margin of appreciation typically afforded to environmental policy, juxtaposed with the ‘common concern of humankind’ rationale used to justify a relaxed associational standing approach for climate change. The *Cannavacciuolo* decision suggests the Court is unwilling to extend that approach to other acute environmental threats like large-scale toxic pollution – an inconsistency that underscores the unsettled boundaries of the Court’s climate and environmental jurisprudence. As Krajnyák points out, the triple planetary crisis includes pollution and biodiversity loss; yet the Court is evidently more cautious about labelling such harms as a singularly urgent threat meriting special procedural flexibility.³⁸

CONTEXTUALISING *KLIMASENIORINNEN*: THE *DUARTE AGOSTINHO* AND *CARÊME* DECISIONS

While the *KlimaSeniorinnen* judgment represents a significant step forward in the Court’s climate change jurisprudence, its potential to catalyze similar cases seems somewhat tempered by the Court’s decisions in *Duarte Agostinho* and *Carême*. In both cases, the Court declared the applications inadmissible, underscoring the procedural hurdles that climate litigants must overcome to have their claims heard on the merits.

In *Duarte Agostinho*, six Portuguese youths brought a case against 33 member states of the Council of Europe, alleging that the respondent states’ inadequate climate policies violated their rights under Articles 2, 8, and 14 of the ECHR. The Court dismissed the complaint in its entirety, finding that it lacked jurisdiction with respect to the 32 non-resident states and that the complaint against Portugal was inadmissible for non-exhaustion of domestic remedies.

On the jurisdictional question, the Court rejected the applicants’ argument that all respondent states had jurisdiction over their ECHR rights by virtue of their collective contribution to climate change [207]. The Court stated that the exercise of jurisdiction is primarily territorial and that the extraterritorial application of the ECHR is exceptional, requiring special justification in the particular circumstances of each case.³⁹ It held that extending jurisdiction to all states based on their diffuse contributions to a global phenomenon like climate change would stretch the concept of jurisdiction beyond recognition and undermine legal certainty [207-208]. It must be noted that the Court’s restrictive approach on this question stands in stark contrast with more progressive stances taken by other human rights bodies, most notably the Inter-American Court of

³⁸ *Cannavacciuolo*, *supra* n. 18.

³⁹ See e.g. ECtHR 12 December 2001, No. 52207/99, ECHR 2001-XII, *Banković and Others v Belgium and Others*, para. 61.

Human Rights⁴⁰ and the UN Committee on the Rights of the Child.⁴¹ For some commentators, the Court's more restrictive approach is indicative of a 'protection gap between emitters and affected individuals' under the ECHR.⁴² For others, however, it signals that the Court considered the applicants' rights to be protected by the uniform mitigation obligation it established in *KlimaSeniorinnen*.⁴³

The latter reading seems plausible, especially when connected with the Court's reasoning on the exhaustion of domestic remedies. On this point, the Court noted that the Portuguese Constitution recognises an actionable right to a healthy environment and that the applicants had not demonstrated any special circumstances absolving them of the requirement to first bring their complaint before the domestic courts [226]. By insisting on the exhaustion rule even in the context of a transnational climate case, the Court reaffirmed the principle of subsidiarity and the primary role of national authorities in securing the ECHR rights. This approach aligns with that of the Committee on the Rights of the Child in *Sacchi*, which likewise resulted in a finding of non-admissibility for failure to exhaust domestic remedies despite the myriad hurdles involved in litigating against foreign states.⁴⁴

In *Carême*, the Court declared inadmissible the complaint by the former mayor of the French municipality of Grande-Synthe alleging that the state's insufficient climate action threatened his right to private and family life. The Court found that the applicant lacked victim status as he had since moved away from the municipality and failed to show how he was personally affected by the alleged harms [84-85]. Significantly, the applicant had argued before the Grand Chamber that he was asthmatic, and that this made him particularly vulnerable to the impacts of climate change; however, the Grand Chamber declined to consider this argument [87]. While some have read this as a regression from the Court's

⁴⁰IACtHR *The Environment and Human Rights* Advisory Opinion OC-23/17 Ser. A. No. 23 (15 November 2017).

⁴¹C. Heri, 'KlimaSeniorinnen and Its Discontents: Climate Change at the European Court of Human Rights', 4 *European Human Rights Law Review* (2024) p. 317.

⁴²A. Rocha, 'States' Extraterritorial Jurisdiction for Climate-Related Impacts', *Verfassungsblog*, 12 April 2024, <https://verfassungsblog.de/states-extraterritorial-jurisdiction-for-climate-related-impacts/>, visited 26 May 2025.

⁴³G. Liston, 'Reflections on The Strasbourg Climate Rulings in Light of Two Aims behind the Duarte Agostinho Case', *EJIL Talk*, 7 May 2024, <https://www.ejiltalk.org/reflections-on-the-strasbourg-climate-rulings-in-light-of-two-aims-behind-the-duarte-agostinho-case/>, visited 26 May 2025.

⁴⁴UNCRC, Decision adopted by the CRC under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in Respect of Communication No. 104/2019, CRC/C/88/D/104/2019 (8 October 2021) (*Sacchi*).

environmental case law,⁴⁵ the decision itself suggests that it was based on purely procedural grounds: it notes that the argument was absent from the applicant's initial application to the Court and, as such, constituted a 'new and distinct complaint' falling outside the scope of 'the case' relinquished to the Grand Chamber [87]. Whether consideration of this argument would have led to a different outcome therefore remains an open-ended question.

All in all, then, the Court's reasoning in *Duarte Agostinho* and *Carême* should not be seen as foreclosing all avenues for extraterritorial or transnational climate litigation under the ECHR. The Court's emphasis on the need for special justification to extend jurisdiction extraterritorially leaves open the possibility that such justification could be established in future cases, particularly where a stronger causal link can be shown between a state's conduct and the alleged harms.⁴⁶ Similarly, the exhaustion requirement, while stringent, may be satisfied where applicants can demonstrate that domestic remedies are unavailable or ineffective in the particular circumstances of their case.⁴⁷

IMPLEMENTATION: SWISS REACTION AND THE COMMITTEE OF MINISTERS

Because the Court did not specify quantitative emission targets – deferring to Switzerland's margin of appreciation – implementation disputes shifted to the national and intergovernmental level. Immediately after *KlimaSeniorinnen*, the Swiss Parliament revised its CO₂ Act and the Law on Secure Electricity Supply, both taking effect on 1 January 2025.⁴⁸ The Government claimed these reforms met the judgment's requirements by aiming to cut greenhouse gas emissions 50% by 2030 and set further mid-term targets.⁴⁹ However, NGOs criticised the

⁴⁵M. Torre-Schaub, 'The European Court of Human Rights' Kick Into Touch: Some Comments under *Carême v. France*', *Verfassungsblog*, 19 April 2024, <https://verfassungsblog.de/the-european-court-of-human-rights-kick-into-touch/>, visited 26 May 2025.

⁴⁶See e.g. C. Rodríguez, 'A Human Rights-Based Approach To Climate Change Litigation', in J. Lin and D. Kysar (eds.), *Climate Change Litigation in the Asia Pacific* (Cambridge University Press 2020). See also A. Rocha, 'States' Extraterritorial Jurisdiction for Climate-Related Impacts', *Verfassungsblog*, 12 April 2024, <https://verfassungsblog.de/states-extraterritorial-jurisdiction-for-climate-related-impacts/>, visited 26 May 2025.

⁴⁷See e.g. ECtHR 19 February 2009, Nos. 46113/99 et al., ECHR 2010, *Demopoulos and Others v Turkey*, para. 70.

⁴⁸B. Çali, 'Watch This Space, Take 2: Execution of Strasbourg's Landmark Climate Mitigation Judgment Verein KlimaSeniorinnen v. Switzerland', 12 March 2025, *EJIL Talk*, <https://www.ejiltalk.org/watch-this-space-take-2-execution-of-strasbourgs-landmark-climate-mitigation-judgment-verein-klimasenioreninnen-v-switzerland/>, visited 26 May 2025.

⁴⁹Verein KlimaSeniorinnen Schweiz and Others v. Switzerland', *HUDOC Exec*, <https://hudoc.eccoe.int/?i=004-65565>, visited 20 March 2025 (Supervision of the Execution of the European Court's Judgments).

legislative package for failing to quantify a carbon budget or otherwise align with the precise requirements set by the Court.⁵⁰

Under Article 46 ECHR, the Committee of Ministers monitors the judgment's execution. Significantly, Switzerland submitted to the Committee of Ministers an Action Report (signalling that it considered itself already compliant), rather than an Action Plan specifying future steps.⁵¹ In this report, it argued that the Court's requirement to enact post-2024 legislation was satisfied and that setting a carbon budget was scientifically contested. Several Rule 9.1 and Rule 9.2 communications from the applicant KlimaSeniorinnen, civil society organisations, and the Swiss National Human Rights Institution countered that the new Swiss laws still fell short of a carbon-budget approach.⁵² They noted that if all states pursued Switzerland's trajectory, global warming would exceed 1.5°C well before mid-century – precisely the 'existential risk' the Court sought to avert.

In March 2025 the Committee of Ministers conducted its first examination of Switzerland's compliance with *KlimaSeniorinnen*. It requested further information on how its reforms would close the lacunae identified by the Court, including whether a quantifiable carbon budget would be established.⁵³ The next supervisory review is scheduled for September 2025, at which point Switzerland must demonstrate measurable progress.⁵⁴

The Committee's firm stance sets a precedent for future oversight of climate judgments: political bodies at the Council of Europe will look not just for formal legislative amendments but for credible alignment with the Court's requirement of 'science-based' reductions.⁵⁵ The extent to which the Committee's March 2025 decision relied on information provided through Rules 9.1 and 9.2 communications highlights the critical role of NGOs and the Swiss National Human Rights Institution in ensuring genuine compliance with the Court's requirements.

⁵⁰Communication in Accordance with Rule 9 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements by the Verein Klimaseniorinnen Schweiz', *KlimaSeniorinnen Schweiz*, 17 January 2025, https://en.klimaseniorinnen.ch/wp-content/uploads/2025/01/250117_Rule_9_submission_KlimaSeniorinnen.pdf, visited 26 May 2025.

⁵¹Çali, *supra* n. 48.

⁵²Communication by KlimaSeniorinnen, *supra* n. 50.

⁵³Supervision of the Execution of the European Court's Judgments, *supra* n. 49, para. 5.

⁵⁴*Ibid.*, para. 9.

⁵⁵A. Murgier, 'From Courtrooms to Ballot Boxes: Switzerland's Ongoing Debate on Environmental Limits and Economic Growth', *EJIL Talk*, 7 February 2025, <https://www.ejiltalk.org/from-courtrooms-to-ballot-boxes-switzerlands-ongoing-debate-on-environmental-limits-and-economic-growth/>, visited 26 May 2025.

FUTURE IMPLICATIONS AND OUTSTANDING QUESTIONS

The Court's approach in *KlimaSeniorinnen* reflects a growing recognition in international human rights law that the effective protection of human rights in the face of global environmental challenges like climate change requires a more anticipatory, preventive approach.⁵⁶ By emphasising states' duties to take positive action to mitigate future risks, rather than merely to respond to present harms, the Court has aligned its jurisprudence with the precautionary principle, which is increasingly seen as a cornerstone of international law as it applies to climate change and human rights.⁵⁷ Similar moves are seen in the jurisprudence of other international bodies⁵⁸ and national courts.⁵⁹ The Court's approach in *KlimaSeniorinnen* both borrows from and reinforces these precedents, further legitimising the turn to rights-based climate litigation across Europe.

For EU member states specifically, this judgment suggests that domestic climate policies must not only adhere to EU law but also sufficiently reflect the evolving scientific understanding of what is necessary to avoid severe climate harm. The Dutch Supreme Court's *Urgenda* judgment and the Brussels Court of Appeal's judgment in *Klimaatzaak* already illustrated that mere compliance with EU climate directives may not suffice if national targets and implementation fall short of scientifically established thresholds required under the ECHR. The *KlimaSeniorinnen* judgment's emphasis on the best available science and international consensus reinforces the understanding of EU climate law as providing an important baseline, which nonetheless leaves room for national courts and the ECtHR to demand greater ambition. Member States, therefore, cannot rely solely on EU standards as a defence against potential ECHR violations; they must proactively adapt national policies to evolving scientific insights and human rights jurisprudence.

The significance of these developments for pending and future climate litigation cannot be overstated. Until now, climate litigation in Europe has primarily relied on national and EU law, with only a handful of cases invoking the

⁵⁶See e.g. J. Knox, 'Constructing the Human Right to a Healthy Environment', 16 *Annual Review of Law and Social Science* (2020) p. 79.

⁵⁷See e.g. A. Trouwborst, 'Prevention, Precaution, Logic and Law: The Relationship between the Precautionary Principle and the Preventative Principle in International Law and Associated Questions', 2(2) *Erasmus Law Review* (2009) p. 105.

⁵⁸E.g. *Sacchi*, *supra* n. 44; Advisory Opinion OC-23/17, *supra* n. 40; UNHRC, Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135/D/3624/2019 (22 September 2022) (*Daniel Billy & Others v Australia*).

⁵⁹M. Wewerinke-Singh, 'Preventing Climate Harm: The Role of Rights-Based Litigation', 40(2) *Wisconsin International Law Journal* (2023) p. 245.

ECHR.⁶⁰ *KlimaSeniorinnen* signals not only that climate impacts engage ECHR rights, but also that states' climate policies are subject to scrutiny by the Strasbourg Court. This is likely to embolden more applicants to bring climate cases under the ECHR, particularly where domestic remedies prove inadequate.⁶¹ Moreover, the Court's recognition of enforceable rights to robust climate action could prompt courts across Europe to adopt more anticipatory approaches to fundamental rights threatened by climate change.⁶²

The Court's approach also clarifies that associational standing may sometimes bypass the individualised-harm threshold. However, the *Cannavacciuolo* ruling suggests this is largely confined to climate change litigation (rather than pollution or biodiversity threats), as per the Court's distinction between 'the specific features' of climate change and other environmental crises. This tension may lead to further challenges from NGOs seeking to contest the narrower stance in large-scale pollution cases.

A core criticism – voiced by Judge Eicke – remains: does holding states accountable for climate action under Article 8 usurp the role of parliaments and executives, especially given the complexities of energy, economic, and social policy? The Court's retort is that it grants a wide margin of appreciation and that it is merely interpreting pre-existing rights in light of evolving scientific evidence, not dictating precise policy. Yet the continued pushback from national political actors and a fraction of the judiciary underscores the unsettled boundaries of judicial activism in environmental matters. This dialectic between the Court's interpretative evolution and national prerogatives may intensify as the climate crisis deepens.

Another outstanding question relates to the judgment's gender dimensions and the Court's approach to vulnerable groups. Despite the applicants' emphasis on older women facing disproportionate health impacts from heatwaves, the Grand Chamber did not fully explore gender or age vulnerability as a basis for relaxing victim status or tailoring remedial obligations. Many scholars argue that ignoring the intersection of age and gender can obscure serious and systemic inequalities in climate impacts.⁶³ As

⁶⁰See e.g. J. Setzer and R. Byrnes, 'Global Trends in Climate Change Litigation: 2020 Snapshot', *LSE Grantham Research Institute*, 2020, https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf, visited 26 May 2025.

⁶¹S. Žatková and P. Paľuchová, 'ECtHR: Verein KlimaSeniorinnenSchweiz and Others v Switzerland (Application. No. 53600/20, 9 April 2024): Insufficient Measures to Combat Climate Change Resulting in Violation of Human Rights', 8(1) *Bratislava Law Review* (2024) p. 227.

⁶²See e.g. Peel and Osofsky, *supra* n. 28, p. 37.

⁶³H. Kolfshootten and A. Hefti, 'Women's Health Rights Can Guide International Climate Litigation: KlimaSeniorinnen v. Switzerland before the European Court of Human Rights', *Health and Human Rights* 15 May 2023, <https://www.hhrjournal.org/2023/05/15/womens-health-rights-can-guide-international-climate-litigation-klimasenioren-schweiz-v-switzerland-before-the-european-court-of-human-rights/>, visited 26 May 2025.

with the Court's reluctance to extend relaxed standing to non-climate environmental cases, it is not yet clear whether a future case with robust evidence on gendered exposure to climate harm might prompt a more flexible approach. For now, the *KlimaSeniorinnen* text mostly cites vulnerability in passing.⁶⁴

Overall, the *KlimaSeniorinnen* judgment signals that ECHR rights can impose significant limits on states' discretion in climate policy, although the margin of appreciation remains broad. The outcome of Switzerland's next report to the Committee of Ministers will reveal more of the Court's influence on national climate frameworks – particularly regarding the prescribed science-based carbon budget. The eventual compliance strategy could become a model (or cautionary tale) for EU member states who also face potential litigation under the ECHR (to say nothing of parallel obligations under EU law).

Meanwhile, other litigants inspired by the Swiss case must navigate the Court's strict stance on individual victim status or extraterritorial jurisdiction (as seen in *Duarte Agostinho*) and the narrower approach to environmental NGO standing in non-climate contexts (as confirmed by *Cannavacciuolo*). Nevertheless, the constitutional significance of *KlimaSeniorinnen* is undeniable: it has placed climate change squarely under the umbrella of human rights law in Europe, refashioning the relationship between state policy-making, the Strasbourg system, and the urgent scientific imperative to avert catastrophic warming.⁶⁵

CONCLUSION

The *KlimaSeniorinnen* judgment marks a watershed moment in European climate litigation, bringing the ECHR's environmental jurisprudence to a new frontier. By recognising a positive obligation under Article 8 to mitigate climate change, it reinforces ongoing developments within European constitutional orders and EU institutions that treat climate change as a fundamental rights issue.

Yet critical methodological tensions remain. The Court's balancing act – granting a wide margin of appreciation while insisting on 'science-based' climate legislation – will continue to generate procedural and political debates. Further, we must ask whether the Court's climate jurisprudence has instantly become *sui generis*, isolated from its broader environmental or procedural case law.⁶⁶ Although climate change poses unique challenges (e.g. global causation,

⁶⁴D. Lupin et al., 'KlimaSeniorinnen and Gender', *Verfassungsblog*, 9 May 2024, <https://verfassungsblog.de/klimaseniorinnen-and-gender/>, visited 26 May 2025.

⁶⁵See further O.W. Pedersen, 'Disruption, Special Climate Considerations, and Striking the Balance', 119(1) *AJIL* (2025) p. 129.

⁶⁶K. Dzehtsiarou, 'Editorial', 5 *European Convention on Human Rights Law Review* (2024) p. 423.

intergenerational harm), some fear that special relaxations of standing for climate cases may ‘spill over’ into other fields or, conversely, remain artificially confined.⁶⁷ *Cannavacciuolo* suggests that *KlimaSeniorinnen* may stand as a special ‘climate carve-out’, prompting critiques that the Court’s stance is inconsistent or artificially narrow if it excludes other serious environmental crises from the same rules on standing.⁶⁸

Finally, the execution phase in Switzerland offers a real-time test of how the ECHR’s innovative climate obligations can be translated into concrete, enforceable measures. The Committee of Ministers’ refusal to accept a purely declaratory Action Report underscores that the landmark nature of *KlimaSeniorinnen* hinges on whether states, under Strasbourg’s watch, adopt carbon budgets or equivalent limits robust enough to safeguard fundamental rights in the face of escalating climate threats. As the crisis accelerates, so too does the legal momentum compelling states to fulfil their human rights obligations – including for vulnerable groups such as elderly women and future generations at risk of life-altering harm.

Margaretha Wewerinke-Singh is an Associate Professor of Sustainability Law at the University of Amsterdam, Adjunct Professor of Law at The University of Fiji and a Member of the Permanent Court of Arbitration in The Hague.



⁶⁷Ibid.

⁶⁸See also J. Sommardal, ‘A Landmark Judgment: Three Crucial Aspects of *Cannavacciuolo* and *Others v Italy*’, *ECHR Blog*, 4 February 2025, <https://www.echrblog.com/2025/02/by-dr.html>, visited 26 May 2025.