MenschenRechtsMagazin
Informationen | Meinungen | Analysen

ISSN 2941-1149 | 30 (2025) 1 | pp. 71–81

Case Discussion

A Landmark Climate Decision: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland and the New Standard for Victim Status

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Abstract

This article explores the landmark decision of the European Court of Human Rights (ECtHR) in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, addressing climate change within the framework of human rights. It critically examines the evolving standards for victim status, highlighting the Court's contentious recognition of an NGO as a victim under Article 8 of the European Convention on Human Rights. The discussion delves into the severity threshold for environmental harm and the complexities of attributing state responsibility for climate change. The analysis underscores the tension between legal interpretation and policy-making, raising important questions about the limits of judicial intervention in global climate governance.

Keywords

ECtHR, climate change, victim status, locus standi, severity threshold, actio popularis

Citation:
Gulnaz Alasgarova, A Landmark Climate Decision: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland and the New Standard for Victim Status, in: MRM 30 (2025) 1, pp. 71–81.
https://doi.org/10.60935/mrm2025.30.1.18.

Received: 2025-01-09
Published: 2025-09-05

I. Introduction

Climate change litigation has increasingly found its way into legal systems worldwide, raising complex questions about the intersection of environmental protection and human rights. The European Court of Human Rights (ECtHR) has grappled with these issues under its established framework, especially in relation to Article 8 of the European Convention on Human Rights[1] (ECHR), which guarantees the right to respect for private and family life. The ECtHR has developed its case law in environmental matters because the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.[2]

The ECHR does not explicitly guarantee the right to a safe, clean, healthy, and sustainable environment. However, as a living instrument, the interpretation of the rights and freedoms is not fixed but can take account of the social context and changes in society.[3] The ECHR could not be a living instrument if its interpretation remained static.[4] Consequently, the ECtHR has established extensive case law recognizing violations of various human rights under the Convention due to environmental risks and harms resulting from state actions or inactions.

Nearly three decades ago, the ECtHR introduced a foundational principle for environmental human rights in its López Ostra v. Spain judgment[5]: severe environmental harm that significantly impacts individuals' well-being can constitute interference with the right to respect for private and family life or home.[6]

This decision, which is the focus of our discussion, has also contributed to defining the Court's standards and has been revolutionary in establishing the framework for victim status. It should be noted that the ECtHR issued its first-ever decision on climate change in *Verein KlimaSeniorinnen Schweiz*, setting it apart from other environmental cases in its established case law.[7] The case analyzed herein delves into the nuanced criteria for victim status and locus standi, particularly in environmental matters where general degradation cannot be the sole basis for claims. By exploring the Court's approach to individual applicants, as well as the association representing collective interests, this document seeks to illuminate the evolving standards and contentious stances within the ECtHR's jurisprudence. The analysis further examines the severity threshold necessary to substantiate claims under Article 8 and the broader implications for climate change litigation within the Convention's framework.

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1 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ETS No. 005.

2 European Court of Human Rights, Climate change, factsheet of April 2024, Available at: https://www.echr.coe.int/documents/d/echr/fs_climate_change_eng (last visited 5 March 2025).

3 Council of Europe, Human Rights and the Environment, Manual (3rd edition) of February 2022, para.34.

4 *Bernadette Rainey/Elizabeth Wicks/Clare Ovey,* The European Convention on Human Rights (6th ed.)., 2014, p.74.

5 ECtHR, *López Ostra v. Spain* (16798/90), judgment of 9 December 1994, para.51.

6 *Natalia Kobylarz*, Managing Change: The European Court of Human Rights Navigating Through Environmental Human Rights in a New Socio-Ecological and Legal Reality' in: Liber Amicorum Robert Spano, Anthemis (2022) pp. 361–375 (364).

7 *Andreas Hösli/Meret Rehmann,* Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: the European Court of Human Rights' Answer to Climate Change., in: Climate Law 2024, *14*(3-4), 263–284. https://doi.org/10.1163/18786561-bja10055, p. 264.

II. Victim status / locus standi

1. Victim status of the applicants

The applicants[8] in the KlimaSeniorinnen-case claimed to be direct victims of a violation of Article 8 of the ECHR on account of "the ongoing failure of the respondent state to afford them effective protection against the effects of global warming".[9] They argued that their complaint did not raise issues of a general degradation of the environment due to the fact that they had been and continued to be at a real and serious risk of mortality and morbidity with every heatwave.[10]

Following the Convention, the Court may receive applications from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the high contracting parties of the rights outlined in the Convention or the Protocols thereto.[11] For the purposes of Article 34 the word "victim" means the person directly affected by the act or omission in issue.[12] Nevertheless, this criterion (i.e. "directly affected") is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings.[13] Since environmental matters concerns everyone, they may become a slippery slope for leading to *actio popularis*. Therefore, the applicant needs to show that there is a direct and immediate link between the impugned situation and the applicant's home, or his private or family life.[14] Simply citing the dangers of pollution does not substantiate the applicants' claim of being victims of a Convention violation. Merely alluding to risks arising from climate change, without demonstrating its direct effect on an applicant, is insufficient for an application to succeed.

In other words, general deterioration of the environment is not sufficient; there must be a negative effect on an individual's private or family sphere.[15] Thus, to omit any possibility of *actio popularis,* the Court presented the criteria to acknowledge the victim status of the applicant:

(a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of govern-

[8] The case involved a complaint filed by four women and the Swiss association *Verein KlimaSeniorinnen Schweiz*, whose members are older women concerned about the impact of global warming on their living conditions and health. They argued that Swiss authorities had not taken adequate measures, despite their obligations under the Convention, to mitigate the effects of climate change. The applicants specifically claimed that the State had failed to fulfill its positive obligations to effectively protect life and ensure respect for private and family life, including the home. Additionally, they asserted that they had been denied access to a court and contended that no effective domestic remedy was available to address their complaints regarding the right to life and the right to respect for private and family life.

[9] ECtHR,*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (53600/20), judgment of 9 April 2024, para. 305.

[10] Ibid., para. 308.

[11] Art. 34 ECHR.

[12] ECtHR, *Balmer-Schafroth and Others v. Switzerland* (67\1996\686\876), judgment of 26 August 1997, para. 26.

[13] ECtHR, *Albert and Others v. Hungary [GC]* (5294/14), judgment of 7 July 2020, para. 121.

[14] Guide to the case-law of the European Court of Human Rights, Environment, [Online]. Available at: https://rm.coe.int/guide-environment-2774-6103-3478-1/1680a866a7, (last visited 5 March 2025), para.60, see also: ECtHR, *Ivan Atanasov v. Bulgaria* (12853/03), judgment of 2 December 2010, para. 66.

[15] ECtHR, *Kyrtatos v. Greece* (41666/98), judgment of 22 May 2003, para. 52.

mental action or inaction affecting the applicant must be significant; and

(b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.[16]

Whether an applicant meets that threshold will depend on a careful assessment of the concrete circumstances of the case such as the prevailing local conditions and individual specificities and vulnerabilities.[17]

With regard to this case, the applicants have not fulfilled the victim-status criteria since they were not successful at proving of high intensity of their exposure to the adverse effects of climate change.[18] Especially the Court noted that it cannot be said that the applicants suffered from any critical medical condition whose possible aggravation linked to heatwaves could not be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation given the extent of heatwaves affecting that country.[19] Some authors claim that the Court's reasoning suggests that victim status may be conferred on individual applicants who can substantiate that they suffer from a serious, heat-affected, medical condition.[20]

At the first glance, we can presume that the Court has stuck to its established case law regarding victim status. Nonetheless, the Court's approach to the victim status of the applicant organization differs from the one applied to the applied to the applicants. This issue is scrutinized below.

2. Locus standi of the applicant association

According to the well-established practice of the Court, one has to have been "directly affected" in person by the violation in question.[21] Article 34 of the Convention overtly stipulates that any non-governmental organization claiming to be the victim of a violation of the rights outlined in the Convention or the Protocols thereto may lodge a complaint with the Court. Rights protected by Article 8 are deemed by the Court as eminently personal and "non-transferable".[22] A corporate body has some but not all of the rights of individuals; it has the right to a fair trial under Article 6, to protection of its correspondence under Article 8, [...], but it does not have the right to education under Article 2 of Protocol 1.[23] The "direct victim requirement" implies that the Court will not consider applications in which a legal entity relies on a Convention right that is inherently attributable to natural persons only – such as the right to respect for private life or home.[24]

[16] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (fn.6), para. 487.

[17] Ibid., para. 488.

[18] Ibid., para. 533.

[19] Ibid.

[20] *Hösli/Rehmann* (Fn. 7), p.267.

[21] Guide to the case-law of the European Court of Human Rights, Environment, [Online]. 30 April 2022. Available at: https://rm.coe.int/guide-environment-2774-6103-3478-1/1680a866a7, (last visited 11 March 2025), para.188.

[22] ECHR-KS KeyTheme – Article 34/35 The locus standi of relatives (indirect victims) to bring a case to the Court when the direct victim has died, p.1 https://ks.echr.coe.int/documents/d/echr-ks/the-locus-standi-of-relatives-indirect-victims-to-bring-a-case-to-the-court-when-the-direct-victim-has-died (last visited 5 March 2025).

[23] *Bernadette Rainey/Elizabeth Wicks/Clare Ovey* (Fn.4), p. 31.

[24] *Natalia Kobylarz*, Overview of environmental case-law of the ECtHR in: Human Rights for the Planet, Proceedings of the High-level Interna-

Moreover, as a rule, organizations cannot claim victim status as a result of measures that affect the rights of their members. The reason why an association may not be considered to be a direct victim is the prohibition on the bringing of actio popularis under the Convention system; this means that an applicant cannot lodge a claim in the public or general interest if the impugned measure or act does not affect him or her directly.[25] In contrast, where a group rights association is a party to a domestic proceeding and its individual members are not, then both the association and its individual members may become victims of any wrongdoing arising out of that proceeding. As the Court noted in the Gorraiz Lizarraga and Others case, indeed, in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively.[26] However, unlike the Gorraiz Lizarraga and Others case, which concerns a violation of Article 6 of the ECHR, the current case deals both with Article 6 and Article 8. In so far as the applicant association alleges a violation of Article 6 § 1 of the Convention, the Court notes that the association was a party to the proceedings brought by it before the domestic courts to defend its members' interests.[27] Accordingly, it considers that the applicant association may be considered a victim, within the meaning of Article 34, of the alleged shortcomings under the provision relied upon.[28]

In the current case, the ECtHR granted the applicant association locus standi but not victim status, since the association cannot be a victim of an alleged violation of human rights.[29] For the association to be recognized as having locus standi to lodge a complaint, it should meet the following criteria:

(a) it must be lawfully established in the jurisdiction concerned or have standing to act there;
(b) it must be able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and
(c) it must be able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.[30]

It acts not only in the interest of its members, but also in the interest of the general public and future generations, with the aim of ensuring effective climate protec-

tional Conference on Human Rights and Environmental Protection, Strasbourg, 5 October 2020, Strasbourg: Council of Europe, pp. 18-29 (22).

[25] ECtHR, *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (37857/14), decision of 7 December 2021, para. 41.

[26] ECtHR, *Gorraiz Lizarraga and Others v. Spain* (62543/00), judgment of 27 April 2004, para. 38.

[27] Ibid., para. 36.

[28] Ibid.

[29] Hösli/Rehmann (Fn. 7), p.268.

[30] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Fn.6), para. 502.

tion.[31] In these circumstances, the Court finds that the complaints pursued by the applicant association on behalf of its members fall within the scope of Article 8.[32] In itself, this approach may seem logical and consistent with the Court's established case-law. The ECtHR has previously recognized the *locus standi* of associations in certain circumstances. Unlike the Court's approach in *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, where it considered the direct victim status of Mr. Câmpeanu, whose rights under the Convention were protected by the applicant association, to be indisputable,[33] in *Verein KlimaSeniorinnen*, the ECtHR's failure to recognize the applicants as direct victims did not prevent it from recognizing the *locus standi* of the association. This raises an important question: if the Court does not identify a direct victim whose rights are being protected by the association, on what basis does it justify granting *locus standi*? Despite its formal reasoning, does the Court not, in effect, treat the association itself as a victim? In light of the fact that the applicants, members of the association, were denied victim status, the recognition of the association itself as a victim of the complained of violations may be interpreted as actio popularis. The abovementioned requirements set for legal persons mainly concern their legal status to act on behalf of their members rather than their exposure to the adverse effects of climate change. In view of the foregoing, we may claim that the Court adopted a contentious stance by recognizing an NGO as a victim in a case concerning the breach of Article 8 of the ECHR. As A. Savaresi has rightly pointed out, the ECtHR's approach in this case places the Court in a paradoxical position by finding a violation of Article 8 without explicitly identifying the victim[34].

In its previous judgments on environmental matters, the Court has come to a conclusion that an NGO cannot claim to be the victim of measures that, on account of environmental pollution or disturbances, have allegedly infringed rights granted by the Convention to the NGO's members.[35] This approach is strictly linked to the wording of the Convention in Art. 34: "The Court may receive applications from [...] non-governmental organization, [...] *claiming to be the victim of a violation* [...]." In contrast, the Court arrived at a markedly different conclusion in the present case. Associations are nevertheless now granted the broadest standing to seek the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change.[36] The Court has noted some key principles that guided its decision with regard to granting victim status to the applicant association. Climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals.[37] This argument itself cannot justify giving them

[31] Ibid, para. 521.

[32] Ibid, para. 525.

[33] ECtHR,*Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania (47848/08)*, judgment of 17 July 2014, para. 106.

[34] *Annalisa Savaresi*, Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making Climate Litigation History. RECIEL 34(1) (2025), p. 279-287. https://doi.org/10.1111/reel.12612, p. 10.

[35] Guide to the case-law of the European Court of Human Rights (Fn. 21), para.192.

[36] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Fn. 9), para. 499.

[37] Ibid., para. 497.

standing in their own right.[38] Furthermore, this argument seems unconvincing in this specific case, since the other applicants – natural persons and by the way, members were not recognized as victims.

As indicated by the Court's evaluation, an excerpt of which is quoted above, the judgment lacks any legal basis for justifying a significant shift in approach. Merely aiming to highlight the issue of climate change, in my view, is insufficient to warrant such an interpretation of victim status, akin to actio popularis. Despite reference to the exclusion of actio popularis in the judgment, the ECtHR no longer upheld the inadmissibility of actio popularis.[39] There is another presumption among legal scholars that this approach may contribute to the protection of the rights of future generations[40].

Considering the above, we must recognize that the Court has adopted an entirely new approach, distinct from the one used in other environmental cases. While the goal of contributing to the fight against climate change is commendable, it should not result in the Court overstepping its authority, leading to a frivolous interpretation of the Convention as a dynamic and living instrument. Some commentators believe that by this judgment, the Court has reached an ambivalent outcome. On the one hand, it has struck an expected and entirely reasonable balance between addressing climate change and preventing the Convention's application got out of hand, on the other, by expanding its established doctrine, it sets the scene for numerous follow-up challenges internationally as well as domestically.[41]

III. Severity threshold

1. The ECtHR's approach to the severity threshold

Apart from the previously discussed aspects, this case also diverges from the conventional approach regarding the severity threshold. The ECtHR has consistently observed in multiple cases that no specific article is intended to provide direct protection to the environment.

"The Court reiterates at the outset that Article 8 is not violated every time an environmental pollution occurs. There is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 [...] Furthermore, the adverse effects of environmental pollution must attain a certain minimum level if they

[38] Tim Eicke, "Partly Concurring Partly Dissenting Opinion on the Case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*", para. 44 (c), ECtHR,*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (53600/20), judgment of 9 April 2024, available at https://hudoc.echr.coe.int/?i=001-233206 (last visited 21 May 2025).

[39] *Sandra Žatková/Petra Paľuchová*,. ECtHR: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20, 9 April 2024): Insufficient Measures to Combat Climate Change Resulting in Violation of Human Rights. *Bratislava Law Review*, 2024, *8*(1), 227–244. https://doi.org/10.46282/blr.2024.8.1.874, p. 232.

[40] *Aoife Nolan*, 'Inter-Generational Equity, Future Generations and Democracy in the European Court of Human Rights' KlimaSeniorinnen Decision',EJIL: Talk!, 15 April 2024, https://www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision/ (last visited 10 March 2025).

[41] *Ole W. Pedersen*, 'Climate Change and the ECHR: The Results Are In", EJIL:Talk!, 11 April 2024, https://www.ejiltalk.org/climate-change-and-the-echr-the-results-are-in/ (last visited 10 March 2025).

are to fall within the scope of Article 8 [...]. There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city [...]."[42]

Considering the facts of the case, it is difficult to be fully persuaded that the severity threshold has been reached in this instance. While it is undeniable that climate change negatively impacts the applicants' quality of private life, there is no evidence in the case to suggest that their discomfort has reached the minimum level of severity required. The case facts do not demonstrate the direct negative effects of climate change on the applicants' well-being.

2. The challenge of establishing causation in climate change cases

It is, of course, one of the characteristics of climate change that its effects have become – at least by reference to any comparators within the respondent State – "environmental hazards inherent to life in every modern city" and, as such, no applicability of Art. 8 is capable of being derived from such a comparison which, in the Court's case-law, tended to be tied to or triggered by an identified source of (potential) pollution within the geographical vicinity[43]. The ECtHR's approach to environmental matters typically depends on establishing a causal link between specific sources of harm and the actual adverse effects on the applicants. Accordingly, those exposed to that particular harm can be localized and identified with a reasonable degree of certainty, and the existence of a causal link between an identifiable source of harm and the actual harmful effects on groups of individuals is generally determinable[44]. The ECtHR distinguished for 'dimensions' of causation: the link between GHG emissions and the various 'phenomena' of climate change; the link between the various adverse effects of climate change and the risk that such effects will impact on the enjoyment of human rights in the present and the future; the link between the harm, or risk of harm, allegedly suffered by particular persons or groups of persons and the acts or omissions of the state against which the complaint is directed; and the attributability of responsibility to a particular state for the adverse effects of climate change on individuals or groups of individuals (given that multiple actors contribute to the aggregate amounts and effects of GHG emissions).[45] In this particular case concerning climate change, it is challenging to pinpoint a specific source of environmental harm. When addressing climate change, the ECtHR distinguishes it from other environmental issues, recognizing that there is no single or specific source of harm. In the context of climate change, the ley characteristics and circumstances are significantly different. [...] GHG emissions arise from a multitude of sources. The harm derives from aggregate levels of such emissions. Secondly, CO_2 – the primary GHG – is not toxic per se at ordinary concentrations. The emissions produce harmful consequences as a result of a complex chain of effects and have no regard for national borders[46]. Moreover, the Court

[42] ECtHR, *Jugheli and Others v. Georgia* (38342/05), judgment of 13 July 2017, para. 62.

[43] *Eicke* (Fn. 38), para. 64.

[44] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Fn.9), para. 415.

[45] Ibid., para. 425.

[46] Ibid., para. 416.

did not specify the reference to 'ordinary concentrations'.[47]

The Court underscores the impossibility of pinpointing the source of harm in the context of climate change. Following this reasoning, one could also argue that it is nearly impossible to determine the specific locations of emission sources within the complex chain producing harmful consequences. As stated in the aforementioned quote, the ECtHR acknowledges that emissions disregard national borders. One of the third-party interveners has also pointed to the fact that [...] it was clear that no solely science-based set of criteria could be used to determine precisely and quantitatively what a country's ultimate fair share to limit global warming consisted of'.[48] It is not obvious how the ECtHR plans to determine the extent and boundaries of a country's responsibility and assert that GHG emissions from that country's territory, rather than those of neighboring states, have caused climate change impacting citizens' rights under the ECHR. The Court would exceed its authority by engaging in a substantive assessment of environmental policy instead of focusing on the procedural assessment of the decision-making process. While the ECtHR acts as a regional body overseeing climate change issues in light of human rights protection, its expertise in this specific area is questionable. The Court provides a legal assessment of factual elements based on the available material. However, when a case involves significant scientific and technical matters, it is crucial to thoroughly examine all possible reports or assessments officially published by bodies tasked with monitoring the implementation of states' obligations to combat climate change. In the week of 29 January and 2 February 2024, i.e. shortly before this judgment was adopted, an expert review team[49] of the Subsidiary Body for Implementation ("SBI"), set up to assist the governing bodies of the UNFCCC, the Kyoto Protocol and the Paris Agreement, was due to review Switzerland's Eight National Communication and Fifth Biennial Report under the UNFCCC/Fifth National Communication under the Kyoto Protocol to the UNFCCC, of 16 September 2022.[50] This report[51] covers inter alia detailed evidence concerning Switzerland's compliance with the quantified emissions limitations and reduction commitments incumbent upon it as an Annex I Party to the Kyoto Protocol.[52] This example demonstrates that the desire to combat climate change is insufficient to justify exceeding the permissible limits of evolutive interpretation and such a drastic shift in the Court's approaches.

A. Hösli and M. Rehmann find the ECtHR's view regarding sources of GHG not being limited to dangerous activities overly simplistic[53]. While it is obvious that the sources of greenhouse gases are everywhere, it is well established (e.g. in IPCC reports) that certain human activ-

[47] *Hösli/Rehmann* (Fn. 7), p. 273.

[48] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (fn.9), para. 393.

[49] The expert review team which considered and reported on Switzerland's previous (2022) Submissions consisted of 21 experts from different Contracting Parties covering six specialist review areas ("Generalist", "Energy", "IPPU" (industrial processes and product use), "Agriculture", "LULUCF and KP-LULUCF" (land use, land-use change, and forestry; and activities under Article 3, paragraphs 3–4, of the Kyoto Protocol) and "Waste") with two lead reviewers.

[50] *Eicke* (Fn. 38), para. 12.

[51] Report on the individual review of the annual submission of Switzerland submitted in 2022 (FCCC/ARR/2022/CHE of 24 February 2023).

[52] *Eicke* (Fn.38), para. 12.

[53] *Hösli/Rehmann* (Fn. 7), p. 274.

ities and industrial subsectors are disproportionately greenhouse-gas-intensive, such as energy production from fossil fuels, animal agriculture (livestock farming), industrial-scale fishing, and air transport.[54]

Considering the conflict between the ECtHR's previous case law and international climate change documents on one hand, and this case on the other, it is hard to disagree with the perspective of the government of Ireland, that this application sought to create a far-reaching expansion of the Court's case law on the admissibility and merits of Articles 2 and 8, that it sought to bypass the democratic process through which climate action should take place if it was to be legitimate and effective and that the application was inconsistent with the dedicated international framework governing climate change to which the Contracting Parties were committed.[55]

The aforementioned judgment against Switzerland has sparked new developments in environmental human rights, challenging several aspects of established jurisprudence.

IV. Conclusion

Environmental pollution and climate change, depending on their severity, undeniably impact both quality of life and human rights. Drawing on the doctrine of the living instrument, the ECtHR has developed extensive case law addressing various articles of the Convention that, in one way or another, pertain to complaints about state actions or inactions concerning environmental issues. While there is no explicit right to a safe, clean, healthy, and sustainable environment, the Court has established a coherent position, effectively addressing the environmental challenges of recent decades.

However, assigning responsibility for climate change is notably more complex than for other environmental issues, as it is difficult to establish a direct causal link between a specific act or omission by a state and the resulting harm.

In the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the Court reexamined its case law and adopted a groundbreaking approach. Although this approach has garnered support from international civil society organizations[56], it also risks opening Pandora's jar. The ECtHR's commitment to leading the fight against climate change has prompted it to prioritize the intention behind its decisions over the rigorous justification of changes in its legal approach. This shift has overshadowed key legal considerations such as the Court's jurisdiction, the victim status of NGOs under Article 8, and the severity threshold.

The case under consideration represents a significant development in the ECtHR's approach to environmental human rights, particularly in the context of climate change. While the Court adhered to established principles in denying victim status to individual applicants based on insufficient evidence of direct and serious harm, its recognition of an association as

[54] Ibid.

[55] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Fn.9), para.369.

[56] *Bhargabi Bharadwaj,* "A new European Court of Human Rights ruling has established a vital new precedent" of 18 April 2024, available at: https://www.chathamhouse.org/2024/04/new-european-court-human-rights-ruling-has-established-vital-new-precedent (last visited 5 March 2025).

a victim marked a notable departure from precedent. This divergence underscores the tension between addressing the pressing issue of climate change and maintaining the procedural and substantive limits of the Convention's framework. Moreover, the Court's interpretation of the severity threshold and its efforts to navigate the inherently diffuse and transboundary nature of climate change impacts highlight the challenges of adapting human rights law to global environmental crises. Ultimately, while the judgment advances the discourse on environmental human rights, it raises critical questions about the balance between evolutive interpretation and judicial overreach, as well as the role of the ECtHR in shaping climate policy within its jurisdiction.