

Climate change landmark case – European Court of Human Rights condemns Switzerland for not doing enough against climate change

In a historic ruling, the European Court of Human Rights ("Court") found that the European Convention on Human Rights ("Convention") encompasses a right to effective protection by the State authorities against the adverse effects of climate change. The Court found that Switzerland had failed to act in a timely and sufficient manner to adopt and implement relevant legislation and measures to mitigate climate change, violating Article 8 of the Convention. Although the judgment is final and binding, the Court did not order Switzerland to take specific measures to comply with the ruling. This new case law will undoubtedly have a significant symbolic and political impact. While the rights protected under the Convention are not directly applicable to private entities such as companies, the judgment may however add further momentum to so-called horizontal climate change lawsuits brought against private entities.

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Background

On 9 April 2024, the European Court of Human Rights in Strasbourg rendered a landmark decision

in a vertical climate change lawsuit brought against the Swiss Confederation. While the Court dismissed two other climate change cases on formal and jurisdictional grounds (*Duarte Agostinho and Others v Portugal and 32 Other States* and *Carême v France*), it partially upheld the case against Switzerland.

The lawsuit arose out of claims brought by the so-called "KlimaSeniorinnen" (Senior Women for Climate Protection Switzerland), an association of senior women supported by Greenpeace, and four individual women. After exhausting all domestic remedies available in Switzerland, the plaintiffs sued the Swiss government before the European Court of Human Rights, arguing, among other things, that their health was threatened by increasing heat waves exacerbated by climate change. They claimed that the Swiss government had violated their human rights protected under the Convention by failing to implement sufficient measures and legislation to combat climate change.

Unprecedented judgment on climate change protection as human right

For the first time, the Court was asked to decide whether a Member State's insufficient action against climate change could amount to a violation of human rights protected under the Convention.

The Court found that Article 8 of the Convention (which provides for the right to respect for private and family life) includes a **right to effective protection by State authorities against the serious adverse effects of climate change** on the lives, health, well-being and quality of life of citizens. It held that a Member State's main duty is to adopt and implement regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. According to the Court, effective compliance with this human right requires States to adopt **measures to reduce greenhouse gas ("GHG") emission levels**, with a view to achieving net zero emission neutrality, **in principle within the next three decades**, in line with their international commitments (most notably the United Nations Framework Convention on Climate Change and the Paris Agreement).

More specifically, the Court held that States need to put in place **specific targets and timelines**, which must form an integral part of the domestic regulatory framework as a basis for mitigation measures. With respect to Switzerland, the Court found that there were critical gaps in the process of establishing the relevant domestic regulatory frameworks, including a failure of the Swiss authorities to quantify, through a carbon budget or otherwise, national GHG emissions limitations.

On the **procedural side**, the Court found that Switzerland had also violated the rules of due process (Art. 6 of the Convention), as the Swiss courts had not provided convincing reasons why they considered it unnecessary to examine the merits of the complaints and had dismissed them on procedural grounds. According to the Court, the Swiss courts had failed to adequately take into account the compelling scientific evidence concerning climate change and had not taken the association's complaints seriously. As there had been no further legal avenues or safeguards available to the applicant association, or to individual applicants/members of the association, the Court found that there had also been a violation of Article 6 of the Convention.



Impact and consequences of the decision

As the judgment was rendered by the Court as an international body of the 46 Member States of the Council of Europe, it is expected to potentially have a significant impact on climate change regulation and litigation, at least in those Member States. While the Court denied standing to the individual plaintiffs, the ruling allows associations or NGOs such as the "KlimaSeniorinnen" to bring lawsuits against Member States that allegedly take insufficient action to mitigate climate change based on the Convention. Moreover, **the impacts of the judgment may extend beyond the Council of Europe Member States** and also affect other international and national courts outside Europe called upon to examine the role of climate policy and State (in)action on human rights.

While the rights protected under the Convention are not directly applicable to private entities such as companies, the **judgment may add further momentum to so-called horizontal climate change lawsuits brought against private entities**, in particular, large corporations whose operations produce significant GHG emissions. Moreover, companies could eventually be indirectly affected by successful lawsuits against State governments as a result of more ambitious carbon reduction targets or climate regulation (commonly referred to as transition risks).

However, it is important to note that the Court was not asked to decide if the plaintiffs should be awarded damages in connection with the effects of climate change, nor did it impose any specific measures on Switzerland, leaving the implementation of the judgment to the Swiss authorities. That said, Switzerland will have a **duty to outline** to the Committee of Ministers of the Council of Europe what **specific measures** the government will take to comply with the Court's judgment.

The decision undoubtedly has a significant symbolic and political impact. It remains to be seen whether and how the ruling will affect relevant legislation and policies adopted by governments and international bodies. One specific issue to be addressed will be to strike a balance between the now recognized human right to be protected from the effects of climate change on the one hand, and the political right to vote on a State's adoption of measures to fight climate change on the other hand, which is of particular relevance for Switzerland's direct democratic process.

Please do not hesitate to contact us if you have any further questions on this subject.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.



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