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CASE NOTES

SPECIAL FEATURE DOMESTIC CLIMATE LITIGATION

Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making climate change litigation history

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Abstract

This case note examines the landmark judgment issued by the European Court of Human Rights regarding the complaint brought by the NGO Verein KlimaSeniorinnen Schweiz and four individual applicants against Switzerland. It explores the groundbreaking nature of this judgment and its broader implications for climate change litigation at the national, regional and international levels.

1 | INTRODUCTION

With *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*,[1] the European Court of Human Rights (ECtHR or 'the Court') became the first international court to deliver a judgment holding a state accountable for failing to take adequate measures to mitigate and prevent the negative impacts of climate change on the enjoyment of human rights. This judgment was highly anticipated and has attracted significant academic interest.[2]

Indeed, the importance of the *KlimaSeniorinnen* judgment can scarcely be overstated. As evident from its lengthy 260-page judgment, the ECtHR was acutely aware of the significance and potentially contentious nature of its ruling. The judgment is part and parcel of the 'environmental jurisprudence' of the ECtHR. So rich and sophisticated is this case law that the Court has established a long-standing tradition of compiling excerpts from its jurisprudence into a 'Manual on Human Rights and the Environment,' which reached its third edition in 2022.[3]

The *KlimaSeniorinnen* judgment builds and expands on this rich jurisprudential tradition. True to its style, the ECtHR proceeded cautiously, offering thoughtful yet—judging at least by the respondent state's reactions[4]—not uncontroversial interpretations of the nature and scope of states' human rights obligations concerning climate change. As this case note will show, however, the *KlimaSeniorinnen judgment largely* aligns with the extant caselaw of the ECtHR on all but one important issue – that of locus standi and the related notion of victimhood.

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

[2]The numerous commentaries published in the immediate aftermath of the judgment, including M Milanovic, 'A Quick Take on the European Court's Climate Change Judgments' (EJIL: Talk!, 9 April 2024) <www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/>; A Buyse and K Istrefi, 'Climate Cases Decided Today: Small Step or Huge Leap?' (ECHR Blog, 9 April 2024) <www.echrblog.com/2024/04/climate-cases-decided-today-small-step.html>; OW Pedersen, 'Climate Change and the ECHR: The Results Are In' (EJIL: Talk!, 11 April 2024) <www.ejiltalk.org/climate-change-and-the-echr-the-results-are-in/>; A Savaresi, L Nordlander and M Wewerinke-Singh, 'Climate Change Litigation before the European Court of Human Rights: A New Dawn' (GNHRE, 12 April 2024) <https://gnhre.org/?p=17984>; S Humphreys, 'A Swiss Human Rights Budget?' (EJIL: Talk!, 12 April 2024) <www.ejiltalk.org/a-swiss-human-rights-budget/>; J Letwin, 'Klimaseniorinnen: The Innovative and the Orthodox' (EJIL: Talk!, 17 April 2024) <www.ejiltalk.org/klimaseniorinnen-the-innovative-and-the-orthodox/>; C Hilson and O Geden, 'Climate or Carbon Neutrality? Which One Must States Aim for Under Article 8 ECHR?' (EJIL: Talk!, 29 April 2024) <www.ejiltalk.org/climate-or-carbon-neutrality-which-one-must-states-aim-for-under-article-8-echr/>; G Letsas, 'Did the Court in Klimaseniorinnen Create an Actio Popularis?' (EJIL: Talk!, 13 May 2024) <www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/>. See also the dedicated series of posts published in <https://verfassungsblog.de/category/debates/the-transformation-of-european-climate-litigation/>.

[3]COE, 'Manual on Human Rights and the Environment' (3rd edn, 2022) <https://rm.coe.int/manual-environment-3rd-edition/1680a56197>.

[4]Communication from Switzerland concerning the case of Verein KlimaSeniorinnen Schweiz and Others v Switzerland (App No 53600/20) (8 October 2024) DH-DD (2024)1123.

Rather crucially, the judgment brings the ECtHR into line with the interpretation of the European Convention on Human Rights (ECHR)[5] first formulated in groundbreaking judgments by domestic courts within the Council of Europe. Starting with *Urgenda Foundation v The State of The Netherlands*,[6] courts all over Europe have increasingly relied on the obligations outlined in the ECHR to affirm the duty of states to reduce greenhouse gas emissions.[7] The ECtHR has confirmed the soundness of this approach and aligned with it, as far as this is possible for an international court, whose judgments are declaratory in nature. *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* is therefore of great consequence for the future of climate change litigation before the national courts of states that are parties to the ECHR.

The significance of this judgment, however, extends well beyond the 46 Member States of the Council of Europe. The ECtHR's findings are likely to influence the reasoning of courts all over the world hearing climate change complaints that rely, in whole or in part, on human rights. Rights-based climate change litigation is a veritably global phenomenon that continues to expand.[8] The Court's approach is particularly likely to influence the framing of states' human rights obligations concerning climate change in the ongoing advisory proceedings before the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR).[9]

This case note begins by summarising the key facts of *KlimaSeniorinnen Schweiz and Others v Switzerland*. It then analyses the salient aspects of the Court's judgment, focusing on the nature and scope of states' human rights obligations in the context of climate change, the notion of victimhood and the associated standing requirements. Finally, the note explores the implications of the judgment for the future jurisprudence of the ECtHR and of domestic courts, as well as its potential influence on the ongoing advisory proceedings before the ICJ and the IACtHR.

2 | THE FACTS OF THE CASE

Adopted in 1951, the ECHR is very much a product of its time, focusing on civil and political rights. Over the years, however, its scope has been expanded through additional protocols and the application of the 'living instrument' doctrine.[10] Pursuant to the latter, the Convention must be interpreted 'in the light of present day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies'.[11] Through the living instrument doctrine, the ECtHR has progressively expanded the scope of the rights protected under the ECHR – and particularly, the rights to life,[12] respect for private and family life,[13] property,[14] and freedom of expression,[15] as well as the rights to a fair trial[16] and to an effective remedy[17] – so as to encompass environmental considerations. Because of these reasons, it was only a matter of time before the Court was asked to address climate change-related concerns.[18]

KlimaSeniorinnen was but one of 13 applications lodged with the ECtHR and one of three selected for consideration by its Grand Chamber.[19] The Grand Chamber typically hears cases that raise 'a serious question affecting the interpretation' of the ECHR.[20] Two out of the three applications before the chamber were dismissed, due to lack of exhaustion of domestic remedies and lack of compliance with victimhood requirements, respectively.[21] This made *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* the first, and so far the only, climate change complaint to be adjudicated on its merits by the ECtHR.

The complaint was brought by four individual applicants and one NGO, who claimed that the state had violated its human rights obligations due to the adverse effects of climate change on elderly women. Specifically, the applicants argued that Switzerland had infringed the

[5]Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended by Protocols Nos. 11 and 14) ('ECHR').
[6]*Urgenda Foundation v The State of The Netherlands (Ministry of Infrastructure and the Environment)* [2015] ECLI:NL:RBDHA:2015:7196 (District Court of the Hague) (court-issued translation) (*Urgenda I*); *The State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation* [2018] ECLI:NL:GHDHA:2018:2610 (The Hague Court of Appeal) (court-issued translation) (*Urgenda II*); *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands) (court-issued translation) (*Urgenda III*).
[7]See eg, *Neubauer* et al *v Germany* [2021] 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20 (German Federal Constitutional Court) (court-issued translation); *VZW Klimaatzaak v Kingdom of Belgium and Others* [2021] 2015/4585/A (Brussels Court of First Instance) (unofficial translation); and *VZW Klimaatzaak Appeal* [2023] 2021/AR/159S (The Court of Appeal of Brussels). See the commentary in L Maxwell, S Mead and D van Berkel, 'Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases' (2022) 13 Journal of Human Rights and the Environment 35; A Savaresi, 'Climate Change Litigation: The Role of International Law' (2024) 13 Cambridge International Law Journal 286; and A Savaresi, 'State Responsibility' in S Mead and M Wewerinke-Singh (eds), *Cambridge Handbook on Climate Change Litigation* (Cambridge University Press 2025) (forthcoming).
[8]See J Peel and HM Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 Transnational Environmental Law 37; A Savaresi and J Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9 Climate Law 244; A Savaresi and J Setzer, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13 Journal of Human Rights and the Environment 7; C Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022).
[9]IACtHR 'Request for an Advisory Opinion on the Climate Emergency and Human Rights Submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile' (9 January 2023) ('Colombia and Chile Request'); UNGA 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' UN Doc A/RES/77/276 (4 April 2023) ('UNGA Request').
[10]First formulated in *Tyrer v UK* App No 5856/72 (ECtHR, 25 April 1978) para 31.
[11]*Selmouni v France* App No 25803/94 (ECtHR, 28 July 1999) para 101. See also *Öcalan v Turkey* App No 46221/99 (ECtHR, 12 May 2005) para 163; and *Demir and Baykara v Turkey* App No 34503/97 (ECtHR, 12 November 2008) para 146.
[12]ECHR (n 5) art 2.
[13]ibid art 8.
[14]ECHR (n 5) Protocol 1, art 1.
[15]ECHR (n 5) art 10.
[16]ibid art 6.
[17]ibid art 13.
[18]A point also raised in OW Pedersen, 'The European Convention of Human Rights and Climate Change – Finally!' (EJIL: Talk!, 22 September 2020) <www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/>.
[19]See *Humane Being and Others v the United Kingdom* App No 36959/22 (ECtHR, 1 December 2022); *Plan B. Earth and Others v the United Kingdom* App No 35057/22 (ECtHR, 13 December 2022); *Asociacion Instituto Metabody v Spain* App No 32068/23 (ECtHR, 5 October 2023); *Duarte Agostinho v Portugal and 32 Other States* App No 39371/20 (ECtHR, 9 April 2024); *KlimaSeniorinnen* (n 1); *Müllner v Austria* App No 18859/21 (ECtHR, pending); *Greenpeace Nordic and Others v Norway* App No 34068/21 (ECtHR, pending); *The Norwegian Grandparents' Climate Campaign and Others v Norway* App No 19026/21 (ECtHR, pending); *Carême v France* App No 7189/21 (ECtHR, 9 April 2024); *Uricchio v Italy and Others* App No 14165/21 (ECtHR, pending); *De Conto v Italy and Others* App No 14620/21 (ECtHR, pending); *Soubeste and 4 other applications v Austria and 11 Other States* App Nos 3195/22, 31,932/22, 31,938/22, 31,943/22 and 31,947/22 (ECtHR, pending); *Engels v Germany* App No 46906/22 (ECtHR, pending).
[20]ECHR (n 5) art 30.
[21]*Duarte Agostinho* (n 19) and *Carême* (n 19).

rights to life and respect for private and family life by failing to adopt and implement adequate legislation to achieve sufficient greenhouse gas (GHG) emissions reductions, as required by international law and supported by the best available scientific science.[22] All applicants also lamented breaches of the rights to access to justice and to an effective remedy, as domestic authorities had refused to hear the merits of their complaint.[23]

3 | THE JUDGMENT

3.1 | Relationship between human rights and climate change law

Given that this was the first time the ECtHR addressed the relationship between climate change and human rights law, a substantial portion of the *KlimaSeniorinnen* judgment is devoted to examining relevant international legal materials,[24] including developments before human rights bodies[25] and national courts.[26] The Court also received a substantial number of third-party interventions and *amicus curiae* briefs from academics, NGOs and human rights organisations.[27]

The judgment unequivocally recognised that climate change poses a serious current and future threat to the enjoyment of human rights and that states bear specific obligations in this connection.[28] Specifically, the Court asserted that it is 'a matter of fact' that states are capable of taking measures to effectively address climate change, and that their duties in the human rights context concern 'the reduction of the risks of harm for individuals'.[29] The ECtHR found that states cannot evade their responsibility by pointing to the responsibility of other states, whether Contracting Parties to the ECHR or not.[30] This position aligns the Court with increasingly abundant case law acknowledging state responsibility for lack of climate action, and rejecting the so-called 'drop in the ocean' argument, according to which an individual state's emissions are too insignificant to matter.[31] The ECtHR's stance is highly significant. As the remainder of this section elaborates in further detail, the Court's reasoning on the nature and scope of states' obligations corroborates the interpretation of state responsibility concerning climate change under human rights law—an approach first adopted by national courts in the *Urgenda* case and, for the first time, embraced by an international court in *KlimaSeniorinnen*.

[22] *KlimaSeniorinnen* (n 1) 130–136.
[23] ibid 211.
[24] ibid 50–124.
[25] ibid 66–105.
[26] ibid 107–124.
[27] The substantive sections of the judgment summarise the main points raised in these submissions. Ibid 148–166.
[28] ibid paras 436–439.
[29] ibid para 439.
[30] ibid para 442.
[31] ibid para 444. This terminology was famously first used in the *Urgenda* judgments (n 6).

3.2 | Nature and scope of states' obligations

The *KlimaSeniorinnen* applicants claimed that Switzerland had violated their rights to life and respect for private and family life by failing to adopt and implement adequate legislation to achieve GHG emissions reductions. They also lamented violations of the rights to a fair trial and to an effective remedy, as domestic authorities had refused to hear their complaint on the merits. The ECtHR found breaches of the right to respect for private and family life, as well as the right to a fair trial. In keeping with its established practice, the Court deemed it unnecessary to examine also the complaints concerning violations of the right to life and the right to an effective remedy. This section analyses the Court's findings, distinguishing the arguments made concerning each violated right.

3.2.1 | The right to respect for private and family life

The *KlimaSeniorinnen* judgment articulates in detail the ECtHR's understanding of the obligations of states to progressively reduce greenhouse gas emissions within the framework of article 8 of ECHR, which recognises the right to respect for private and family life. This provision represents the bedrock of the Court's environmental jurisprudence. Pursuant to the Court's established caselaw under article 8, public authorities must take positive measures to ensure the effective enjoyment of the right to respect for private and family life and also refrain from any actions that could infringe upon it.[32] This includes the regulation of third-party activities and the prevention of third-party violations.[33]

Over the years, the ECtHR has repeatedly found that 'severe environmental pollution' – such as excessive noise levels generated by an airport,[34] fumes, smells and contamination emanating from a waste treatment plant[35] and toxic emissions from a factory[36] – can interfere with a person's peaceful enjoyment of their home in such a way as to constitute a violation of article 8, *even when* the pollution has not had a discernible impact on the applicants' health.[37] Indeed, the Court has handled an increasingly large number of cases involving systemic environmental pollution,[38] including multiple applications from citizens within the same region.[39]

[32] See eg *Guerra and Others v. Italy* App No 14967/89 (ECtHR, 19 February 1998) para 58; *Moreno Gómez v. Spain* App No 4143/02 (ECtHR, 16 November 2004) para 61.
[33] See eg *Fadeyeva v. Russia* App No 55723/00 (ECtHR, 9 June 2005) para 89.
[34] *Hatton and Others v. the United Kingdom* App No 36022/97 (ECtHR, 8 July 2003) para 96.
[35] *López Ostra v. Spain* App No 16798/90 (ECtHR, 9 December 1994); *Giacomelli v Italy* App No 59909/00 (ECtHR, 2 November 2006).
[36] *Cordella and Others. v. Italy* App Nos 54,414/13 and 54,264/15 (ECtHR, 24 January 2019); *Fadeyeva* (n 33).
[37] *Fadeyeva* (n 33) para 87; *Taşkın and Others v. Turkey* App No 46117/99 (ECtHR, 10 November 2004) para 113; *Ioan Marchiş and Others v. Romania* App No 38197/03 (ECtHR, 28 June 2011) para 28.
[38] See eg, *López Ostra* (n 34); *Guerra* (n 31); *Giacomelli* (n 34); *Fadeyeva* (n 32); *Okyay* et al *v Turkey* App No 36220/97 (ECtHR, 12 July 2005).
[39] See eg, *Ledyayeva and Others v Russia* App Nos 53,157/99, 53,247/99, 53,695/00 and 56,850/00 (ECtHR, 26 October 2006), which reiterated the grievances raised in *Fadeyeva v. Russia*.

It was therefore particularly important for the Court to explain how climate change interferes with the effective enjoyment of the right to respect for private and family life and fits within its well-established case law on human rights violations linked to environmental harm. The Court seized this opportunity to highlight distinctions between its 'traditional' approach to environmental cases[40] and the specific circumstances of the case at hand. It enumerated the reasons why, in its view, climate change differs from other environmental issues that have been addressed in its past case law. These include the distinctive characteristics of GHGs as pollutants, which originate from multiple sources that are not all inherently 'dangerous' nor intrinsically toxic at ordinary concentrations.[41] The Court furthermore highlighted: the complex and unpredictable impacts of GHG pollution in terms of time and place[42]; that combating and halting climate change does not depend on the adoption of specific localised or single-sector measures[43]; the intergenerational burden associated with climate action[44]; and local variations in the relative importance of emissions sources and mitigation and adaptation measures.[45] Because of these fundamental differences, the Court asserted that it would be 'neither adequate nor appropriate' to directly apply its existing environmental case law to the context of climate change.[46] Yet, as the rest of this case note will show, this is largely what the Court ended up doing, with some significant variations.

The ECtHR asserted that article 8 ECHR "must be seen as encompassing 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".[47] It elaborated that this right requires each party to undertake 'measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades'.[48] The Court outlined the specific criteria to assess compliance with this positive obligation. These criteria revolve around whether the domestic authorities have had due regard to the need to:

a. *adopt general measures* specifying a target *timeline* for achieving *carbon neutrality* and the overall remaining *carbon budget* for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;
b. set out *intermediate GHG emissions reduction targets* and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;
c. provide *evidence* showing whether *they have duly complied*, or are in the process of complying, with the relevant GHG reduction targets (see sub- paragraphs (a)-(b) above);
d. *keep the relevant GHG reduction targets updated* with due diligence, and based on the best available evidence; and
e. *act in good time* and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.[49]

This wide-ranging interpretation of states' positive obligations aligns and builds on the numerous cases of rights-based climate change litigation, in Europe and beyond.[50]

The more general criteria concerning the State's duty to adopt, properly implement and enforce legislation closely align with the past jurisprudence of the Court on human rights and the environment. The expectation that states act promptly and consistently in creating and implementing relevant legislation and measures resonates with similar statements in earlier case law on the state's positive obligation to regulate and prevent environmental harm and properly enforce the related legislation.[51]

The other criteria set out in *KlimaSeniorinnen* however go beyond simply requiring compliance with existing laws. The ECtHR detailed what the law should include, making reference to the setting of timelines, targets and carbon budgets. These elements are becoming increasingly common in climate legislation worldwide, particularly in Europe.[52] These requirements in domestic climate change laws have, in turn, been at the heart of a growing body of climate litigation.[53] In *KlimaSeniorinnen*, the ECtHR took stock of this practice and turned it into criteria against which to ascertain compliance with states' obligations under article 8 ECHR.

The Court specifically elaborated on the role of international law obligations in this connection. As in the *Urgenda* judgments, the ECtHR emphasised that GHG reduction measures should align with obligations under the UNFCCC and the Paris Agreement, as well as the scientific evidence provided by the Intergovernmental Panel on Climate Change (IPCC).[54] Without mentioning it explicitly, the Court applied the principle of systemic integration under article 31(3)(c) of the Vienna Convention of the Law of Treaties.[55] Systemic integration serves as a technique for interpreting international law that promotes coherence by positing that when states create new obligations, they are presumed not to deviate from existing obligations found in

[40]As noted above, the court's 'traditional' environmental jurisprudence is collected in the Manual on Human Rights and the Environment (n 3).
[41]*KlimaSeniorinnen* (n 1) paras 416–418.
[42]ibid para 417.
[43]ibid para 419.
[44]ibid para 420.
[45]ibid para 421.
[46]ibid para 422.
[47]ibid para 519.
[48]ibid para 548.
[49]ibid para 550. Emphasis added.
[50]See the review in Savaresi and Setzer (n 8); P de Vilchez and A Savaresi, 'The Right to a Healthy Environment and Climate Litigation: A Game-Changer?' (2021) 32 Yearbook of International Environmental Law 3; R Luporini and A Savaresi, 'International Human Rights Bodies and Climate Litigation: Do not Look Up?' (2023) 32 Review of European, Comparative & International Environmental Law 267.
[51]See eg *López Ostra* (n 35) para 55; *Fadeyeva* (n 33) para 133.
[52]K Kulovesi et al, 'The European Climate Law: Strengthening EU Procedural Climate Governance?' (2024) 36 Journal of Environmental Law 23.
[53]*Urgenda* (n 6); *Neubauer* (n 7); *VZW Klimaatzaak* (n 7). See also the commentary in Maxwell, Mead and van Berkel (n 8).
[54]*KlimaSeniorinnen* (n 1) para 546.
[55]Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 ('VCLT') art 31(3)(c); and ILC, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission' UN Doc A/CN.4/L.682 (13 April 2006) 38.

relevant and applicable international law sources between the parties unless explicitly stated otherwise.[56] For several years, international institutions have promoted systemic integration by urging states to interpret and implement their obligations under climate treaties in a manner that supports, rather than conflicts with, other international law obligations,[57] including human rights ones.[58] Although the *KlimaSeniorinnen* judgment does not explicitly reference article 31(3)(c) of the Vienna Convention of the Law of Treaties,[59] its understanding of international obligations in the area of climate change clearly aligns with this rule of interpretation.

Regarding the States' margin of appreciation – a term the ECtHR uses to refer to the discretion of national authorities in making decisions in accordance with the principle of subsidiarity – the Court asserted that 'climate protection should carry considerable weight in the balancing of any competing considerations.'[60] The Court drew a distinction between the scope of the margin as regards, 'the state's commitment to the necessity of combating climate change and its adverse effects and the setting of the requisite aims and objectives in this respect', and the 'choice of means designed to achieve those objectives'.[61] Regarding the former, the Court reasoned that a narrower margin of appreciation should apply, while affording a broader margin of appreciation to the latter.[62]

In applying these newly established criteria to the complaint brought by KlimaSeniorinnen, the Court identified 'critical lacunae' in Switzerland's process for developing its domestic regulatory framework, including the failure to quantify national greenhouse gas emissions limitations, whether through a carbon budget or other methods.[63] The Court also noted that Switzerland had not met the emission reduction targets set by national legislation and had failed to act in a timely, appropriate and consistent manner in designing and implementing new legislative and administrative measures, following the rejection of proposed measures in referenda.[64] Given these shortcomings, the Court found that there had been a breach of Switzerland's obligations under article 8 of the ECHR.

This conclusion was however disputed by the dissenting judge, Eicke, who disagreed with the rather detailed and specific criteria set by the majority for assessing compliance with article 8 and with the corresponding narrowing of the margin of appreciation afforded to states.[65] He maintained that the finding of a substantive violation of article 8 had no basis in the text of the Convention, nor in the Court's case law.[66] Judge Eicke also took issue with the Court's findings on who could claim to be a victim of a violation of article 8. This matter is analysed further below.

3.2.2 | The right to a fair and public hearing

In *KlimaSeniorinnen*, the Court also found that Switzerland had violated article 6, which safeguards the right to a fair and public hearing.[67] This outcome was widely anticipated, given that the applicants had exhausted all domestic remedies without their case being heard on the merits. The judgment explicitly references the Aarhus Convention,[68] which sets out provisions on access to justice in environmental matters,[69] providing yet another example of the ECtHR's reliance on the principle of systemic integration.[70]

Importantly, however, the ECtHR only found admissible under article 6 the complaint regarding lack of access to a court due to the failure to implement mitigation measures as prescribed by existing Swiss law.[71] Conversely, the Court set aside the complaint regarding lack of access to a court concerning the state's inadequate legislative and regulatory action. This is an important distinction from domestic climate litigation à la *Urgenda*, where courts have been accused of judicial overreach precisely for allowing applicants to challenge decisions by the legislature concerning a state's climate ambition.[72] Yet, the ECtHR's stance on this matter is hardly unexpected. Under its margin of appreciation doctrine, the Court primarily concentrates on the implementation and enforcement of existing legislation and generally hesitates to instruct states to annul or override laws.[73]

No doubt mindful of concerns over judicial overreach, the ECtHR took great care to highlight the crucial role of domestic courts in

[56]See C McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention' (2005) 54 International and Comparative Law Quarterly 279, 318; B Chambers, *Interlinkages and the Effectiveness of Multilateral Environmental Agreements* (United Nations University Press 2008) 248.

[57]The literature on this subject matter is abundant. See eg, S Oberthür and OS Stokke (eds), *Managing Institutional Complexity: Regime Interplay and Global Environmental Change* (MIT Press 2011); M Young, 'Climate Change and Regime Interaction' (2011) 5 Carbon and Climate Law Review 147; J Dunoff, 'A New Approach to Regime Interaction' in MA Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press 2012) 157; and H van Asselt, *The Fragmentation of Global Climate Governance: Consequences and Management of Regime Interactions* (Edward Elgar Publishing 2014).

[58]A Savaresi, 'Climate Change and Human Rights: Fragmentation, Interplay and Institutional Linkages' in S Duyck, S Jodoin and A Johl (eds), *Routledge Handbook of Human Rights and Climate Governance* (Routledge, Taylor & Francis Group 2018); S Jodoin, A Savaresi and M Wewerinke-Singh, 'Rights-Based Approaches to Climate Decision-Making' (2021) 52 Current Opinion in Environmental Sustainability 45; A Savaresi, 'UN Human Rights Bodies and the UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change: All Hands on Deck' (2023) 4 Yearbook of International Disaster Law Online 396, 398.

[59]VCLT (n 55) art 31(3)(c); ILC (n 55) 38.

[60]*KlimaSeniorinnen* (n 1) para 542.

[61]ibid para 543.

[62]See the commentary in C Hilson, 'The Meaning of Carbon Budget within a Wide Margin of Appreciation: The ECtHR's KlimaSeniorinnen Judgment' (Verfassungsblog, 11 April 2024) <https://verfassungsblog.de/the-meaning-of-carbon-budget-within-a-wide-margin-of-appreciation/>.

[63]*KlimaSeniorinnen* (n 1) para 573.

[64]ibid para 573.

[65]ibid paras 543–548.

[66]ibid Partly Concurring Partly Dissenting Opinion of Judge Eicke, para 62.

[67]*KlimaSeniorinnen* (n 1) para 638.

[68]ibid para 602.

[69]United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, art 9.

[70]See eg *Taşkın and Others v. Turkey* (n 37) para 99; *Tătar v. Romania*, App. No 67021/01 (ECtHR, 27 January 2009) para 69; *Di Sarno and Others v. Italy* App. No 30765/08 (ECtHR, 10 January 2012) para 107; *Grimkovskaya v. Ukraine* App. No 38182/03 (ECtHR, 21 July 2011) paras 39, 69 and 72.

[71]*KlimaSeniorinnen* (n 1) para 616.

[72]See eg M Peeters, 'Urgenda Foundation and 886 Individuals v. The State of the Netherlands: The Dilemma of More Ambitious Greenhouse Gas Reduction Action by EU Member States' (2016) 25 Review of European, Comparative & International Environmental Law 215.

[73]ibid para 594, citing *Ruiz-Mateos v. Spain* App No 14324/88, (European Commission of Human Rights, 19 April 1991), Decisions and Reports 69, 22; *Posti and Rahko v. Finland* App No 27824/95 (ECtHR, 24 September 2002) para 52; and *Project-Trade d.o.o. v. Croatia* App No 1920/14 (ECtHR, 19 November 2020) para 68.

enforcing state obligations related to climate change and the importance of access to justice in challenging state authorities' failure to comply with national law.[74]

In his dissenting opinion, Judge Eicke concurred with the majority's finding that there had been a violation of article 6, but disagreed on who the actual victim of the violation was. While the majority concluded that only the association's right had been violated,[75] Judge Eicke contended that the outcome of the proceedings initiated by the individual applicants was directly decisive for their civil rights under domestic law. He therefore argued that the individual applicants should also have been considered victims of the violation of article 6.[76] Here, the *KlimaSeniorinnen* judgment sought—arguably, not very successfully—to strike a delicate balance on complex issues of locus standi and the related criteria of admissibility and victim status under the ECHR. These matters are commonplace in climate change litigation[77] and are examined in greater detail in the next section.

3.3 | Victimhood

The ECtHR can accept applications from any individual, non-governmental organisation or group of individuals who claim to be victims of a violation of the rights established in the Convention or its Protocols by one of its member states.[78] In this context, applicants are generally required to demonstrate that they have been *personally* or *directly* affected by an alleged violation of one or more of the rights recognised by the ECHR. The Court has historically been reluctant to allow applicants to bring complaints on behalf of others—one of the few exceptions being deceased individuals.[79] Even so, the Court has been willing to recognise civil society organisations as victims, particularly in relation to alleged violations of procedural rights – namely, those to access information, justice and freedom of association. These rights can be enjoyed by legal persons, bearing rights in their own right, which can include corporations,[80] as well as associations representing their members.[81] Over the years, environmental complaints before the ECtHR have been brought by a variety of associations, acting in conjunction with individual applicants,[82] as well as in isolation.[83] These applications tend to rely largely, though not exclusively, on procedural rights. Merely pursuing a claim in the public interest (*actio popularis*) is instead not permitted under the Convention.[84]

Verein KlimaSeniorinnen Schweiz and Others v Switzerland was brought by four individual applicants and one NGO, established to advocate for and implement effective climate protection on behalf of its members, all of whom are women, largely over the age of 70. All the applicants claimed violations of their substantive rights—namely, articles 2 and 8—and procedural rights—namely, articles 6 and 13—that formed the core of the application.[85]

In its judgment, the Court significantly departed from its consolidated jurisprudence on the matter of victimhood, prompting a flurry of academic commentary on whether it had 'opened the floodgates' of litigation[86] and surreptitiously created an unprecedented form of *actio popularis* – as maintained by the dissenting Judge Eicke.[87]

To consider an issue under article 8, the ECtHR typically determines whether there is a causal link between the activity in question and the negative impact on the individual and whether the adverse effects have surpassed a specific threshold of harm. This minimum threshold is assessed based on the specific circumstances of the case, which include the intensity and duration of the nuisance, its physical or mental effects and the overall environmental context.[88] The ECtHR environmental caselaw establishes that applicants must demonstrate that the environmental nuisance is sufficiently serious to affect adversely the enjoyment of their right.[89] The Court has repeatedly affirmed that there is no arguable claim under article 8 where the alleged detriment is negligible in comparison to the environmental hazards "inherent in life in every modern city".[90]

Over the years, the ECtHR has addressed numerous cases involving widespread environmental pollution, including multiple applications from citizens within the same region and experiencing similar conditions.[91] These cases are typically brought by victims affected by systemic failures to either implement or properly enforce legislation, leading to widespread environmental harm. In this connection, the ECtHR has consistently held that 'severe environmental pollution' can interfere with a person's peaceful enjoyment of their home, constituting a violation of article 8, even in cases where the pollution has *not* demonstrably affected the applicants' health.[92]

This environmental case law is crucially relevant in the context of the *KlimaSeniorinnen* complaint. The underpinning assumption is that instances of systemic environmental pollution can result in findings of ECHR violations, even when a large number of individuals are affected. This is consistent with the Court's established jurisprudence

[74] *KlimaSeniorinnen* (n 1) para 639.
[75] ibid para 633.
[76] ibid Partly Concurring Partly Dissenting Opinion of Judge Eicke paras 57–58.
[77] See e.g. A Savaresi, 'Human Rights and the Impacts of Climate Change: Revisiting the Assumptions' (2021) 11 Oñati Socio-Legal Series 231.
[78] ECHR (n 5) art 34.
[79] See *Centre for Legal Resources on Behalf of Valentin Câmpeanu v Romania* App No 47848/08 (ECtHR, 17 July 2014).
[80] See eg *Project-Trade d.o.o. v. Croatia* (n 73).
[81] *Gorraiz Lizarraga and Others v Spain* App No 62543/00 (ECtHR, 27 April 2004) paras 46 and 47.
[82] ibid.
[83] See eg, *Verein gegen Tierfabriken v. Switzerland* App No 24699/94 (ECtHR, 28 June 2001); *Vides Aizsardzības Klubs v Latvia* App No 57829/00 (ECtHR, 27 May 2004); and *L'Erablière A.B.S.L. v Belgium* App No 49230/07 (ECtHR, 24 February 2009).
[84] See *Lindsay and others v UK* App No 31699/96 (ECtHR, 17 January 1997); *Ilhan v Turkey* App No 22277/93 (ECtHR, 27 June 2000) paras 52–53.
[85] *KlimaSeniorinnen* (n 1).
[86] See eg, G Letsas, 'The European Court's Legitimacy After Klimaseniorinnen' (2024) 11 European Convention on Human Rights Law Review 1.
[87] *KlimaSeniorinnen* (n 1) Partly Concurring Partly Dissenting Opinion of Judge Eicke, paras 22–51.
[88] Manual on Human Rights and the Environment (n 3) 35.
[89] ibid.
[90] ibid 36.
[91] Examples include *Ledyayeva and Others* (n 39), which reiterated the grievances raised in *Fadeyeva* (n 33); and *Öçkan et autres c. Turquie* Appl. No.46771/99 (10 November 2004) which reiterated the grievances raised in *Taşkın* (n 37).
[92] *Fadeyeva* (n 33) para 87; *Taşkın* (n 37) para 113; *Ioan Marchiş* (n 37) para 28.

on the concept of a 'potential victim,' whereby the Court has recognised that, for example, a legislative act may directly impact millions or even the entire population of a State Party.[93]

In the context of climate change, the ECtHR observed that issues such as individual victim status or the precise content of state obligations cannot be determined solely on the basis of a "strict condicio sine qua non requirement".[94] It reasoned that state's duties concerning climate change hinge on the obligation to reduce the risks of harm for individuals, and that failures in the performance of those duties entail an aggravation of the risks involved.[95]

The Court asserted that to claim victim status in complaints regarding harm or risk of harm from alleged state failures to address climate change, an applicant must demonstrate that they were personally and directly affected. This requires the Court to establish the following circumstances:

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 governmental 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.[96]

The Court reasoned that the threshold to meet these requirements is particularly high and depends on circumstances such as the prevailing local conditions and individual specificities and vulnerabilities. The Court's assessment of whether these requirements are met would include "the nature and scope of the applicant's complaint; the actuality/remoteness and/or probability of the adverse effects of climate change in time; the specific impact on the applicant's life, health or well-being; the magnitude and duration of the harmful effects; the scope of the risk (localised or general); and the nature of the applicant's vulnerability."[97]

With reference to the *four individual applicants*, the Court found that the available evidence did not demonstrate that they were exposed to the adverse effects of climate change, or at risk of such exposure at any relevant point in the future, with a degree of intensity that would give rise to a pressing need to ensure their individual protection.[98] Instead, the Court reasoned that the applicant organisation had been a 'vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the Respondent state.'[99] In this connection, the Court outlined the criteria that an NGO must meet to lodge an application for a state's alleged failure to take adequate measures against the adverse effects of climate change. Pursuant to these, an association must:

1. be lawfully established or have standing to act in the state concerned;
2. demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives; and
3. show that it is genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction of a state Party.[100]

While the Court's approach provides useful guidance for its future handling of this subject matter, it also places the Court in a rather paradoxical position. If the Court found a violation of article 8, one might ask who the victim is in this context. As Judge Eicke noted in his dissenting opinion, if the victims include the members of the association on whose behalf the claim was brought, then the question arises of why they are considered to lack victim status.[101] Letsas argues that the Court's reason for denying victim status to the four applicants while granting standing to the association, may be based on 'utilitarian' concerns and a fear of opening the floodgates of litigation to indefinite number of victims.[102] However, the premise for the Court's approach seems flawed. As noted above, it is not a necessary condition of admissibility that the individual victim must be affected differently from others. In fact, numerous complaints before the ECtHR have involved a potentially indefinite number of applicants due to the widespread and systemic nature of the violations at issue.[103]

The dissenting judge, Eicke, criticised the majority for being inconsistent with the established jurisprudence of the Court on this specific issue.[104] Commentators have more mercifully sought to justify the applicant organisation's locus standi, suggesting that the Court implicitly intended to use it as a vehicle to advocate for the protection of the rights of future generations.[105] If that were the case, it would seem odd for the Court to miss the opportunity to explicitly engage with this subject matter in the case brought by Portuguese youth against Portugal and another 32 States.[106] The climate cases currently pending on the Court's docket may yet provide additional insight into this complex and contentious issue.[107] In the meantime, the ECtHR has already had the opportunity to clarify that the rather controversial interpretation of civil society organisations' locus standi to lodge an

[93]See eg, *Klass and Others v. Germany* App No 5029/71 (ECtHR, 6 September 1978); *Dudgeon v UK* App No 7525/76 (ECtHR, 23 September 1981); *Norris v Ireland* App No 10581/83 (ECtHR, 26 October 1988); *Modinos v. Greece* App No 15070/89 (ECtHR, 22 April 1993). See also Letsas (n 86) 5.
[94]*KlimaSeniorinnen* (n 1) para 439.
[95]ibid para 439.
[96]ibid para 487. Emphasis added.
[97]ibid para 488.
[98]ibid para 533.
[99]ibid para 523.
[100]ibid para 502.
[101]*KlimaSeniorinnen* (n 1) Partly Concurring Partly Dissenting Opinion of Judge Eicke, paras 22–51.
[102]Letsas (n 86) 6.
[103]See *Klass and Others v. Germany* (n 93); *Dudgeon v UK* (n 93); *Norris v Ireland* (n 93); *Modinos v. Greece* (n 93). See also Letsas (n 86) 5.
[104]*KlimaSeniorinnen* (n 1) Partly Concurring Partly Dissenting Opinion of Judge Eicke, paras 22–51.
[105]A Nolan, 'Inter-Generational Equity, Future Generations and Democracy in the European Court of Human Rights' Klimaseniorinnen Decision' (EJIL: Talk!, 15 April 2024) <www.ejiltalk.org/inter-generational-equity-future-generations-and-democracy-in-the-european-court-of-human-rights-klimaseniorinnen-decision/>; Letsas (n 86) 7–8.
[106]*Duarte Agostinho* (n 19).
[107]*Uricchio* (n 19); *De Conto* (n 19); *Soubeste* (n 19); *Engels* (n 19).

application, as outlined in the *KlimaSeniorinnen* judgment, applies exclusively to climate change-related complaints.[108]

3.4 | Execution of the judgment

The ECtHR's judgments are binding on Parties to the ECHR.[109] Yet, they are essentially declaratory in nature, meaning the Court adjudicates breaches of international law but lacks the authority to, for example, strike down domestic legislation. Supervision of the execution of judgments by the respondent states is carried out by the Committee of Ministers.[110] If a respondent state refuses to abide, the Committee may refer the question to the Court as to whether that state has failed to fulfil its obligations.[111] The Swiss authorities criticised what they described as the ECtHR's broad interpretation of the Convention, arguing that it expanded the scope of the ECHR.[112] Even so, they paid the entire amount awarded for just satisfaction (€80,000) to the applicant association, within the deadline set by the Court. They issued a communication outlining the measures taken to comply with the judgment, including the adoption of a revised CO_2 Act for the period up to 2030. The communication also announced plans to adopt further measures, such as submitting Switzerland's nationally determined contribution (NDC) for the period 2031–2035 by 10 February 2025,[113] and developing a consultation draft for the next revision of the CO_2 Act for 2031–2040.[114]

Civil society organisations criticised Switzerland's announced measures, arguing that the government has failed to fully comply with the ECtHR's judgment. They claimed the government disregarded key aspects of the decision and had not adequately addressed the shortcomings of Switzerland's climate policies.[115] In particular, they argued that Switzerland had failed to implement several general measures required by the judgment, including quantifying a fair share of a 1.5°C-aligned national carbon budget and establishing a regulatory framework with clear objectives, goals and timely, consistent action for relevant legislation and measures.[116]

In March 2025, the Council of Europe's Committee of Ministers' assessment of the Swiss authorities' execution of the KlimaSeniorinnen judgment recognised the resolution of certain issues, particularly the filling of some legislative gaps.[117] However, the Committee also requested the respondent state to provide additional details on several matters. Specifically, it sought information on the progress in drafting a CO_2 ordinance and asked for evidence that the methods used to develop and implement the legislative and administrative framework complied with criteria laid out in the judgment, including the quantification of national greenhouse gas emissions limitations, possibly via a carbon budget. The Committee of Ministers also asked for updates on adaptation measures and efforts to address the impacts of climate change, especially on vulnerable populations. Finally, the respondent state was asked to provide additional information on the implementation of procedural safeguards in climate change-related decision-making, specifically regarding public information and consultation, as well as access to courts for associations in climate-change litigation.

4 | LOOKING AHEAD: THE LEGACY OF KLIMASENIORINNEN

Verein KlimaSeniorinnen Schweiz and Others v Switzerland marks a significant milestone in climate change litigation. As noted above, this was the first time an international court held a state accountable for failing to take adequate action to reduce its greenhouse gas emissions. This judgment highlights the crucial role of human rights law as a means of enforcing the duty of states to meet their obligations under international climate change law.

Seven climate-related complaints are currently pending before the ECtHR, with more likely to follow.[118] These cases are expected to be decided based on the principles established in *KlimaSeniorinnen*. The Court's detailed approach in this judgment is aimed at shaping its future jurisprudence in this complex and contentious area, setting criteria that are likely to guide its assessment of both pending and future complaints.

The approach in the *KlimaSeniorinnen* judgment—particularly concerning the issue of victimhood—does not appear to be airtight and may be subject to revision, especially with regard to the criteria for victimhood and individual applicants' access to the court. The judgment leaves room for future cases to refine these concepts. The pending case of *Müllner v. Austria*, filed by an individual with a health condition exacerbated by climate change,[119] offers the Court an opportunity to revisit the interpretation of victimhood and potentially find a violation based on an individual applicant's claim. Other cases

[108] *Cannavacciuolo and Others v. Italy* Appl. Nos 39,742/14, 51,567/14, 74,208/14 et al. (ECtHR, 30 January 2025), paras 220–221.
[109] ECHR (n 5) art 46(1).
[110] ibid art 46(2).
[111] ibid art 46(4).
[112] Swiss Federal Council, 'The Federal Council clarifies its position on the European Court of Human Rights' judgment regarding climate protection' (Press Release, 28 August 2024) <www.admin.ch/content/gov/fr/accueil/documentation/communiques/communiques-conseil- federal.msg-id-102,244.html>.
[113] Switzerland's Second Nationally Determined Contribution under the Paris Agreement 2031–2035 (2025) <https://unfccc.int/sites/default/files/2025-01/Switzerland%20second%20NDC%202031-2035.pdf>
[114] Communication from Switzerland concerning the case of Verein KlimaSeniorinnen Schweiz and Others v Switzerland (n 4).
[115] CIEL, 'Switzerland's Refusal to Fully Comply with Groundbreaking Climate Ruling Undermines the Country's International Credentials' (Press Release, 9 October 2024) <www.ciel.org/news/switzerland-refuse-to-fully-comply-with-climate-judgement/>.
[116] Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Greenpeace International, Climate Litigation Network and 31 others (17 January 2025) <https://climatelitigationnetwork.org/wp-content/uploads/2024-01-17-Verein-KlimaSeniorinnen_Rule-9.2-Submission_NGO-Coalition-1.pdf>
[117] Council of Europe, 'H46–30 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20) Supervision of the execution of the European Court's judgments' (6 March 2025) CM/Del/Dec (2025)1521/H46–30 <https://search.coe.int/cm?i=0900001680b476d8>.
[118] *Müllner* (n 19); *The Norwegian Grandparents' Climate Campaign* (n 19); *Greenpeace Nordic and Others v Norway* (n 19); *Uricchio* (n 19); *De Conto* (n 19); *Soubeste* (n 19); *Engels* (n 19).
[119] *Müllner v Austria* (n 19).

on the Court's docket present opportunities to clarify its position on the protection of the rights of children and youth,[120] as well as on the scope of the state's negative obligations to refrain from actions that contribute to climate harm, such as issuing new oil and gas licences.[121]

As I have noted elsewhere, however, the significance of the *KlimaSeniorinnen* judgment extends well beyond the ECtHR and the Council of Europe.[122] The ECtHR interpreted the state's obligations under the ECHR in light of those under international climate change law treaties. While this understanding of the interplay between states' obligations under distinct international legal regimes is not new,[123] it has struggled to gain clear and consistent affirmation in the case law of international human rights bodies.[124] *KlimaSeniorinnen* marks a significant evolution of the interpretation of the interplay between human rights and climate change law by an international court. By connecting state obligations to protect human rights with those to address climate change, the judgment reaffirms the critical role of human rights in shaping and enforcing climate change law. This judgment marks a milestone for future climate change litigation worldwide, including ongoing advisory proceedings before the ICJ and the IACtHR, which have been specifically tasked with examining states' international obligations regarding climate change under human rights law.[125] Given the overlap in questions raised in these proceedings and those addressed in *KlimaSeniorinnen*, it is likely that both courts will consider the ECtHR findings. The history of international adjudication on climate change is therefore only just beginning, with numerous significant and impactful chapters yet to be written.

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[120] *Uricchio* (n 19); *De Conto* (n 19); *Soubeste* (n 19); *Engels* (n 19).
[121] *Greenpeace Nordic and Others v Norway* (n 19); *The Norwegian Grandparents' Climate Campaign and Others v Norway* (n 19).
[122] Savaresi (n 7) 299.
[123] See eg, S Humphreys, 'Conceiving Justice: Articulating Common Causes in Distinct Regimes' in S Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press 2010); and Savaresi 2018 (n 58).
[124] See the commentary in Luporini and Savaresi (n 50) 268.
[125] ICJ (n 9) and IACtHR (n 9).