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The ECtHR's *KlimaSeniorinnen* Judgment: A Cautious Model for Climate Litigation

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Abstract: The judgment of the European Court of Human Rights in the 2024 case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* represents the first time that an international court found a human rights violation in light of States' greenhouse gas emissions policies. Responses to this judgment spanned a wide spectrum from surprised but welcoming academic reactions, to allegations of judicial overreach and calls to terminate Switzerland's membership in the European Convention on Human Rights from domestic political actors. Various of these discussions consider *KlimaSeniorinnen* to be an example of public interest litigation, understanding this term as synonymous with that of the proscribed *actio popularis*. The present contribution engages with this discussion. To do so, it first describes the style of *KlimaSeniorinnen* as a model judgment sitting somewhere between an individual judgment and an advisory opinion. It then clarifies the content of this model, noting that it is overall cautious or deferential to State decisions and other ongoing processes while also setting important parameters for rights-based litigation. Thirdly, it argues that there is an important distinction to be made between public interest cases, on the one hand, and *actio popularis* cases, on the other.

Keywords: Climate litigation European Court of Human Rights public interest litigation *KlimaSeniorinnen* victim status *actio popularis*

(A) INTRODUCTION

The *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* judgment of the European Court of Human Rights (ECtHR) has been widely discussed since it was issued in April of 2024. The applicants in the case argued that Switzerland had not taken sufficient mitigation action to protect the rights of older women from climate-aggravated heat waves. The resulting judgment represents the first time that an international court found a human rights violation in light of States' greenhouse gas emissions. Responses to this judgment spanned a wide spectrum from surprised but welcoming academic reactions,[1] to allegations of judicial overreach and calls to terminate Switzerland's membership in the European Convention on Human Rights (ECHR) from domestic politicians.[2] Various of these discussions consider *KlimaSeniorinnen* to be an example of public interest litigation, understanding this term as synonymous with that of the *actio popularis*, which is precluded under the ECHR system.

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1 G. Letsas, 'The European Court's Legitimacy After Klimaseniorinnen', *European Convention on Human Rights Law Review* (published online ahead of print 2024) [https://doi.org/10.1163/26663236-bja10111].

2 Swiss People's Party, 'Das Strassburger Urteil ist inakzeptabel die Schweiz muss aus dem Europarat austreten' (9 April 2024).

The present contribution engages with this case in three steps. First, it discusses the style of the *KlimaSeniorinnen* judgment as a model judgment, arguing that it leaves room for interpretation, which in turn invites conflicting assessments of the case's content and demands (Section B). Secondly, it clarifies the content of this model in its broad strokes, noting that the Court's approach is marked by caution or deference to State decisions and other ongoing processes while at the same time setting out the key parameters for rights-based climate litigation, opting for a science-based approach that unequivocally links human rights to the phenomenon of climate change (Section C). Thirdly, this article engages with the nature of the *KlimaSeniorinnen* judgment, and the overall idea that climate litigation represents strategic or public interest litigation, arguing that a clearer distinction is needed between abstract cases and public interest cases, especially as concerns situations stemming from systemic problems (Section D). Section E. concludes.

(B) THE STYLE OF THE *KLIMASENIORINNEN* JUDGMENT: A MODEL FOR FUTURE CASES

In many ways, the *KlimaSeniorinnen* judgment provides a model for future climate litigation, both in Strasbourg and beyond. This is clear from its content which contains extensive comparative law analysis and general considerations about climate science and the link between human rights and climate change, as discussed in the next section and its impact on discussions around climate litigation. In this regard, the Court established important general parameters, such as the fact that climate change threatens the enjoyment of human rights, that climate science is relevant for interpreting the law, and that "drop in the ocean"-type arguments about the contribution of a particular State cannot serve to excuse it from protecting human rights.[3]

Much has already been written about this judgment, and will continue to be written.[4] Likewise, in legal practice, the judgment is already proving influential: it is being applied by domestic courts[5] and referenced by dozens of States in the proceedings

[3] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, paras. 436 and 444.

[4] See for example A. Hösli and M. Rehmann, '*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*: The European Court of Human Rights' Answer to Climate Change', 14(3-4), *Climate Law* (2024) 263-284 [https://doi.org/10.1163/18786561-bja10055]; P. Minnerop and A. Haines, '*KlimaSeniorinnen v Switzerland*: the European Court of Human Rights Leads the Way on Climate Action' 387 *BMJ* (2024) 1-2 [https://doi:10.1136/bmj.q2156]; E. Erken, 'Scholarly and Empirical Considerations on Expanding Access for Non-Governmental Organisations Before the European Court of Human Rights', European Convention on Human Rights Law Review (published online ahead of print 2024) [https://doi.org/10.1163/26663236-bja10107];J.Laffranque,'KlimaSeniorinnen Climate Justice and Beyond', European Convention on Human Rights Law Review (published online ahead of print 2024), [https://doi.org/10.1163/26663236-bja10113]; K. Dzehtsiarou, '"*KlimaSeniorinnen* Revolution": The New Approach to Standing', European Convention on Human Rights Law Review (published online ahead of print 2024), [https://doi.org/10.1163/26663236-bja10110]; M. Zaballos Zurilla, '¿Un nuevo derecho fundamental a la protección efectiva contra el cambio climático?' 50 *Revista CESCO* (2024), 202 215 [https://doi.org/10.18239/RCDC_2024.50.3493].

[5] High Court of Justice for England and Wales, *R (Friends of the Earth Ltd, Kevin Jordan and Doug Paulley) v. Secretary of State for Environment, Road & Rural Affairs*, [2024] EWHC 2707 (Admin), 25 October 2024.

concerning the International Court of Justice's advisory opinion on climate change.[6] The fact that this ruling would serve as a model judgment was perhaps inevitable given that this was the Court's first engagement with climate change – albeit alongside two other cases[7] heard by the same formation and declared inadmissible on the same day as the *KlimaSeniorinnen* judgment was issued, as well as a handful of cases declared inadmissible beforehand, but without reasoning.[8] The Court seems to have been aware from the beginning that its first climate cases would serve a guiding function and be the subject of cross-regime dialogue. It held special procedural meetings on how to go about processing these cases,[9] and relinquished its first three climate applications directly to the Grand Chamber for clarification. At the same time, and unlike climate-related proceedings pending before other international courts, this is a contentious case based on an individual application against one specific State, and not an advisory proceeding. That entails certain limitations: advisory opinions entail clarification of legal obligations, and not their application to a concrete set of facts. Conversely, advisory opinions are generally non-binding, whereas the *KlimaSeniorinnen* judgment is binding on Switzerland under Article 46(1) ECHR.

The present contribution understands this judgment as sitting – sometimes uncomfortably – between the function of an individual application and an advisory opinion. Broaching a topic as multi-layered as climate change for the first time was certainly not easy for the Court, both in terms of the complexity and political nature of certain questions involved, such as the request to attribute a "fair share" of emissions to Switzerland,[10] and in terms of the potential for backlash from States.

This tension – between deciding an individual contentious case against one specific State, and setting out general standards that could also apply in future cases, all without exceeding the Court's role or legitimacy – means that some parts of the judgment are opaque, leaving room for conflicting interpretations. For example, opinions differ on who the victim was in the case,[11] whether the case recognizes new rights,[12] and what Switzerland is required to do to comply.[13] Most of these arguments are not made in bad faith, and they draw on (elements of) the judgment's text. Some of these issues will be clarified by follow-up applications, with the next two cases on the docket being the *Müllner*

6 ICJ, *Request for an Advisory Opinion on the Obligations of States in Respect of Climate Change*, UNGA Res. 77/276, 29 March 2023. See e.g. the verbatim statements of the proceedings published by the ICJ.

7 ECtHR, *Carême v. France*, no. 7189/21, Decision [GC] of 9 April 2024; ECtHR, *Duarte Agostinho and Others v Portugal and 32 Member States*, no. 39371/20, Decision [GC] of 9 April 2024.

8 ECtHR, *Plan B. Earth and Others v. the United Kingdom*, no. 35057/22, Decision of 1 December 2022; ECtHR, *Humane Being and Others v. the United Kingdom*, no. 36959/22, Decision of 1 December 2022; ECtHR, *Instituto Metabody v. Spain*, no. 32068/23, Decision of 5 October 2023.

9 ECtHR, Press release, 'Status of climate applications before the European Court', ECHR 046 (2023) (9 February 2023).

10 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, paras. 78, 82, 303-304, 320.

11 G. Letsas, 'The European Court's Legitimacy After Klimaseniorinnen', *European Convention on Human Rights Law Review* (published online ahead of print 2024) [https://doi.org/10.1163/26663236-bja10111].

12 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, Partly Concurring Partly Dissenting Opinion of Judge Eicke.

13 Swiss Federal Council, Press release of the Swiss Federal Executive (28 August 2024); Joint press release by the KlimaSeniorinnen association and Greenpeace (9 October 2024).

v. Austria[14] and *Greenpeace Nordic and others v. Norway*.[15] These cases not only provide the Court with an opportunity to refine the existing standards in the *KlimaSeniorinnen* judgment, but also invite it to engage with additional questions (including protections related to disability, Indigeneity, and youth, as well as the sufficiency of mitigation measures under the EU climate regime, to which Switzerland as a non-EU State was not bound). At the same time, these tensions open the judgment up to criticism where it is interpreted as being excessively broad or distant from the text of the ECHR, with these arguments verging on the territory of bad faith where they are used opportunistically for political advantage.[16] To counter these positions, the following section argues that, read holistically and contextually, the *KlimaSeniorinnen* judgment is in fact a cautious model for future climate cases.

(C) THE CONTENT OF THE *KLIMASENIORINNEN* MODEL: CAUTION AND SUBSIDIARITY

Reading the *KlimaSeniorinnen* as a whole, and especially the conclusions reached by the Court, it is clear that the Grand Chamber was led by its regard for the primary role of domestic decision-makers in setting out mitigation policy and taking the relevant measures.[17] In addition to a procedural (Article 6 ECHR) violation, it found a violation of Article 8 ECHR, the right to respect for private and family life, but in its *regulatory* aspect. This means that Switzerland has a positive obligation to regulate its emissions in a coherent and detailed way, as well as an obligation to subject climate cases to serious judicial review, but not an ECHR-based obligation to adhere to a certain timeline or reach specific reductions targets. In essence, this judgment calls for better (i.e. more detailed) domestic regulation, and more substantive engagement by domestic courts. It does not, however, replace domestic mitigation targets or dictate the measures to be taken domestically.

To get to this conclusion, the Court had to examine the admissibility requirements under the ECHR. In particular, this case hinged on the issue of whether the applicants (four individual older women, and the association that represented them) had victim status and standing to bring a case to the Court. Victim status and standing are two different, if interrelated, issues under Art. 34 ECHR. Victim status relates to the quality of being affected in one's rights, while standing relates to the limitation of the right of individual application to persons, nongovernmental organisations or groups of individuals. The two are interlinked, with the standing rule occasionally allowing representative standing (e.g. for deceased victims) and serving particularly to exclude individual applications by governmental entities.[18]

In *KlimaSeniorinnen*, the Court found that the victim status requirement had to be revised for climate cases. It had to be particularly stringent to avoid *actio popularis* cases,

14 ECtHR, *Müllner v. Austria*, no. 18859/21, communicated on 1 July 2024.
15 ECtHR, *Greenpeace Nordic and Others v. Norway*, no. 34068/21, communicated on 16 December 2021.
16 Charlotte E. Blattner, 'Separation of Powers and KlimaSeniorinnen', *Verfassungsblog* (30 April 2024).
17 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, paras. 413, 541.
18 *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, ECHR (2014); *Forcadell i Lluis and Others v. Spain* (dec.) no. 75147/17, 7 May 2019. In all see V.P. Tzevelekos, 'Standing: European Court of Human Rights (ECtHR)' in: H. Ruiz Fabri (ed.), *The Max Planck Encyclopedia of International Law* (Oxford 2019).

and therefore had to require both a high level of climate-related risk and "a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm" (i.e. adaptation measures).[19] As will be argued below, the fear of *actio popularis* here is subject to one's understanding of that term given that it seems to be the scale of climate-related risks, and the number and breadth of potential climate-related applications, that drove the Court's considerations in this regard.

For present purposes, this article emphasizes that the particularly high threshold for individual victim status which the individual applicants were not found to have met, leading to the inadmissibility of their part of the case is one aspect of the Court's cautious approach to climate cases. Although is complemented by allowing representative standing of climate associations subject to certain criteria (lawful local establishment, dedication to climate and human rights, being genuinely qualified and representative to represent victims), it is not yet clear how broadly this test will be interpreted. For example, the KlimaSeniorinnen association was, according to its statutes, set up to pursue a climate case, so it is not yet clear if associations with broader mandates will meet this requirement.[20] In any case, it appears that going forward it will be more difficult to bring climate-related applications than other kinds of cases under Article 34.

The caution exercised by the Court in *KlimaSeniorinnen* is on particular display in two particular additional regards: first, as concerns the content of the regulatory obligation at stake, and secondly as concerns reparations. In terms of the State's regulatory obligation, the Court found that states had a narrowed margin of appreciation as concerns setting of climate-related aims and objectives (e.g. global temperature goals), but a wide margin of appreciation in the choice of means to pursue those aims and objectives.[21] To understand if a State had overstepped that margin of appreciation, the Court announced a set of criteria.

According to these criteria, the Court will cumulatively examine five aspects of States' mitigation policies,. In doing so, it examines (a) whether the relevant authorities have adopted general measures (i.e. legislation) specifying a timeline for achieving carbon neutrality and a quantification of future GHG emissions (e.g. a carbon budget), in line with overarching national and/or global mitigation commitments (e.g. the country's NDC). It will also examine whether a State has adopted (b) adequate intermediate targets and pathways and (c) duly complied with its own targets; as well as (d) diligently updating these targets based on the best available (scientific) evidence; and (e) acted in good time, appropriately and consistently.[22] Applying these criteria to Swiss climate law and policy, the Court found "critical lacunae", especially a failure to quantify remaining emissions through, for example, a carbon budget.[23] In other words, the State had not regulated its own emissions in a concrete, planned-out way. This was the core of the Article 8 ECHR violation found in *KlimaSeniorinnen* aligning closely with the Court's

19 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, para. 487.
20 Statutes of the KlimaSeniorinnen association, p. 1.
21 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, para. 440.
22 *Ibid.*, para. 550.
23 *Ibid.*, para. 557.

overall environmental case-law, which equally emphasizes regulatory obligations.[24] This is in many ways a hands-off obligation, with the Court leaving the concrete regulation and its implementation to States, underscoring the Court's cautious and subsidiary approach.

Another aspect that bears mentioning in this regard concerns the remedial or reparatory aspects of the case. The applicants had sought an order of general measures under Article 46 ECHR setting clear targets, specifically an indication the State was to take "all suitable measures to allow it to achieve a level of annual emissions compatible with its target of attaining a minimum reduction of 40% in GHG emissions by 2030, and carbon neutrality by 2050."[25] The Court refused to grant such an order, leaving it to the State to implement the judgment. Citing the bindingness of the judgment, the State's differentiated margin of appreciation, and the complexity of the issues involved, the Court held that it was "unable to be detailed or prescriptive".[26] It considered that Switzerland, with implementation guidance from the Committee of Ministers, was "better placed than the Court to assess the specific measures to be taken."[27] Switzerland later argued that no additional measures were needed given recent regulatory changes,[28] with its action plan pending before the Committee of Ministers at the time of writing.

Initial judicial analyses of this judgment have considered it a measured judgment that places constrained demands on States. More specifically, in a recent adaptation case before the High Court of Justice for England and Wales in the United Kingdom (UK), a judge considered that "the significance of the judgment for the UK's climate change framework should not be overstated" given that the UK did not face the same regulatory lacunae as Switzerland.[29] Although the UK's actual compliance will only be clear if and when it is decided on by the ECtHR itself, this analysis reflects the measured ambition of the guidance issued by *KlimaSeniorinnen*. Simultaneously, however, the judgment's content cannot be ignored or understood selectively. In this regard, in his analysis, the same High Court of Justice judge rejected the government's argument that certain parts of *KlimaSeniorinnen* should be considered a (perhaps persuasive, but non-binding) *obiter dictum*. In doing so, he argued that the (common-law) concept of *obiter dicta* could not be imposed on the case-law of the ECtHR, whose judges may come from legal traditions that do not use this concept. This point is an interesting one. Certainly, it is problematic to disregard any part of the Court's judgment, which is binding in full. It is important to read this guidance as a whole, and not to distort the Court's findings. At the same time, many of the general principles set out here require further concretization before they can be applied in practice. Some, like the Court's references to intergenerational equity, may have been more about providing context or noting an overarching public interest to be balanced than creating actual legal obligations. This is discussed in the following section.

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24 ECtHR, *Di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012, para. 106; ECtHR, *Tătar*, no. 67021/01, 27 January 2009, para. 88; ECtHR, *Cuenca Zarzoso v. Spain*, no. 23383/12, 16 January 2018, para. 51.

25 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, para. 654.

26 *Ibid.*, para. 657.

27 *Ibid.*

28 Press release of the Swiss Federal Executive, 28 August 2024.

29 High Court of Justice for England and Wales, *R (Friends of the Earth Ltd, Kevin Jordan and Doug Paulley) v. Secretary of State for Environment, Road & Rural Affairs*, [2024] EWHC 2707 (Admin), 25 October 2024, para. 98.

Before moving on to this third aspect of the discussion, it should be made clear that although *KlimaSeniorinnen* represents a useful model for one type of climate case, specifically a mitigation case against high-emitting developed States, it is certainly not a comprehensive model, and it is very much shaped by the European political context from which it comes. There are many aspects of climate injustice and climate-related human rights impacts that are not covered by this judgment. For example, it notably does not recognize a right to a healthy environment, which is still absent from the text of the ECHR although it has been recognized by all other regional human rights systems around the world.[30] In short, crucial aspects of climate justice like extraterritorial human rights obligations, concrete and equitable reductions obligations, tailored environmental rights and a differentiated approach to climate impacts according to vulnerabilities of different groups are missing from this judgment. These omissions are explained by the institutional and political context within which the Court delivered this ruling, which is accordingly an important part of understanding this judgment and its usefulness for follow-up cases, especially in other systems.

(D) THE NATURE OF THE JUDGMENT: *ACTIO POPULARIS* OR PUBLIC INTEREST LITIGATION?

As noted above, many aspects of *KlimaSeniorinnen* will need to be clarified through the Court's interpretation in future climate cases. E.g.: Can *any* applicants meet the new, particularly high victim status threshold? What kinds of legal persons meet the representative standing criteria? Have States who do have clear but unambitious mitigation plans violated the ECHR? Does adherence to the EU's climate regime fulfil ECHR obligations? And what does the ECtHR require in adaptation cases, including in terms of effective preparedness for climate-aggravated disasters such as for example the 2024 floods in Valencia?[31] In this latter regard it is relevant to note that, in past cases, although not ones linked explicitly to climate change, the Court found violations of Article 2 ECHR in the context of floods and mudslides given regulatory and preparatory failures, including "omissions in implementation of the land-planning and emergency relief policies".[32]

These questions will require answers that are difficult to achieve at present based purely on the text of the *KlimaSeniorinnen* judgment. However, it is important to avoid the impression that this text is entirely ambiguous. In fact, when read as a whole its text provides answers to many questions that are currently being debated, including in political fora, with negative implications for the Court's legitimacy.[33] In particular, it has been variously argued that *KlimaSeniorinnen* represents an *actio popularis* or that, if

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30 C. Heri, 'Slouching towards Strasbourg? Recognizing the Right to a Healthy Environment at the Council of Europe', *GNHRE blog*, 27 May 2024.

31 F. Otto, 'Why did so many die in Spain? Because Europe still hasn't accepted the realities of extreme weather', *The Guardian*, (4 November 2024).

32 *Budayeva and Others v. Russia*, no. 15339/02, 11673/02, 15343/02…, 20 March 2008, para. 158.

33 Swiss National Council, Declaration (12 June 2024), preceded by Swiss Council of States, Declaration (6 June 2024); Swiss Council of States, Motion 24.3485, 'The ECtHR should remember its core task' (25 September 2024).

it does not, then this is only because the applicant association was granted standing to represent future generations.[34] The present contribution considers that these arguments do not represent the text of the judgment, read as a coherent whole. In other words, there is a danger of reading individual paragraphs of the ruling in isolation or ignoring the Court's elaborate buildup to its discussion of victim status and standing.

The Swiss domestic reaction to this judgment and specifically the Parliamentary reaction in the form of several motions and two official statements, which informed but did not define the official reaction of the Federal government accused the Court of overreach.[35] The two statements, which bear the title "effective human rights protection by international courts instead of judicial activism", accuse the Court of exceeding the limits of its "living instrument" approach to interpretation and contest its legitimacy.[36] In September 2024, the upper house of Swiss Parliament also passed a motion seeking the negotiation of an additional protocol to the ECHR, arguing that the Court had lost track of the meaning of Article 34 ECHR and had introduced a vehicle for abstract public interest litigation.[37] This motion is still pending approval by the lower house, but its existence and approval by at least one house of the Swiss Parliament shows the power of the *actio popularis* argument.

It is argued here that this position is difficult to reconcile with the text of the judgment, read comprehensively. There are two core points to this argument. First, an *actio popularis*, understood here as an abstract complaint which does not affect the complainant in his or her own rights, is different in nature from a complaint about a systemic problem that affects or threatens to affect many. And secondly, there is no indication in the judgment that the KlimaSeniorinnen association did not represent affected people.

In this latter regard, some have understood the fact that the Court denied victim status to the four individual applicants in the case as meaning that the association did not in fact represent climate victims, and that the case had accordingly been brought in the abstract. This brings George Letsas, for example, to ask: "[i]f there was a violation of Article 8 ECHR, as the Court accepted, then who is the victim?"[38] To answer this question, Letsas has made an intriguing argument about the possibility that the association was representing not older women, but future generations. He argues that it was "simply an oversight" that the Court did not explicitly make this connection.[39] However, this argument is difficult to square with the Court's own finding, elsewhere in the judgment, that "the legal obligations arising for States under the Convention extend

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34 G. Letsas, 'The European Court's Legitimacy After Klimaseniorinnen', *European Convention on Human Rights Law Review* (published online ahead of print 2024) [https://doi.org/10.1163/26663236-bja10111].

35 See the sources cited in the next two footnotes.

36 Swiss National Council, Declaration (12 June 2024), preceded by Swiss Council of States, Declaration (6 June 2024); Swiss Council of States, Motion 24.3485, 'The ECtHR should remember its core task' (25 September 2024).

37 Swiss Council of States, Motion 24.3485, 'The ECtHR should remember its core task' (25 September 2024).

38 G. Letsas, 'The European Court's Legitimacy After Klimaseniorinnen', *European Convention on Human Rights Law Review* (published online ahead of print 2024) [https://doi.org/10.1163/26663236-bja10111], 5.

39 *Ibid*., 10.

to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party".[40]

There is, I would argue, a simpler and more textual solution to this conundrum. That is to recognize that while the individual applicants may not have met the particularly high victim status test set out especially for individuals bringing climate cases, this does not mean that they or other members of the association were unaffected. In other words, while they did not meet the "special" climate victim test, they may have very well met the Court's usual victim status requirement as per its general case-law, which appears to be implicit within the requirements for representative standing by climate associations. Notably, the Court found that its "findings undoubtedly suggest that the applicants belong to a group which is particularly susceptible to the effects of climate change".[41] It also "accepted that heatwaves affected the applicants' quality of life".[42]

This argument indicates two things. First, that cases stemming from a systemic problem such as climate change, which poses a universal if differential risk to all human beings are not necessarily *actiones populares* as long as they concern affected persons. In other words, cases that pursue a result conceived as being in the 'public interest' are not necessarily abstract, because individual and public interests understood here as general political interests are not necessarily mutually exclusive, especially where the protection of human rights is concerned. Secondly, and relatedly, that the label of public interest litigation must be understood more broadly than the term '*actio popularis*', because public interest cases need not be abstract (and therefore inadmissible).

(E) CONCLUSION

The present article has engaged with the 2024 *KlimaSeniorinnen* judgment of the European Court of Human Rights as a model, albeit a cautious one, for future climate litigation. Given the novelty of climate-related engagement for the ECtHR, and the need to clarify general principles and obligations, in some sense the judgment sits between an advisory opinion and an individual case. This explains the vagueness of certain of the Court's findings. In addition, *KlimaSeniorinnen* is far from a perfect model for all global climate cases: there are many aspects of climate injustice and climate-related human rights impacts that are not covered by this judgment, and it notably does not recognize a right to a healthy environment, which is absent from the text of the ECHR but has been recognized by all other regional human rights systems around the world. However, the judgment provides a valuable and measured judicial engagement with the human rights impacts of climate change, setting the stage for follow-up engagement by both the ECtHR and domestic courts some of which is already taking place. Engaging in depth with the judgment as a whole, it becomes clear that the allegations made against its and the Court's legitimacy on the domestic plane, including particularly the allegation that it allows an *actio popularis*, can be countered. In particular, it is neither clear that the case did not represent current victims of climate change nor that it was brought solely in the public interest.

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40 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 9 April 2024, para. 420.
41 *Ibid*., para. 531.
42 *Ibid*., para. 533.