



Working Paper 2026.1.5.9
- Vol. 1 , No. 5

TƯ CÁCH KHỞI KIẾN CỦA *KLIMASENIORINNEN*: MỘT CẢNH CỬA MỚI CHO CÁC VỤ KIẾN VỀ KHÍ HẬU TRƯỚC TÒA ÁN NHÂN QUYỀN CHÂU ÂU

Nguyễn Thị Ngọc Diệp¹

Sinh viên K64 Luật Kinh doanh quốc tế - Khoa Luật
Trường Đại học Ngoại Thương, Hà Nội, Việt Nam

PGS. TS Nguyễn Minh Hằng

Giảng viên Khoa Luật
Trường Đại học Ngoại Thương, Hà Nội, Việt Nam

Tóm tắt

Thông qua bước ngoặt lịch sử trong tranh tụng về khí hậu từ vụ kiện *Verein KlimaSeniorinnen Schweiz v. Thụy Sĩ*, bài nghiên cứu này xem xét cách Tòa án Nhân quyền Châu Âu (ECtHR hay Tòa án trong bài viết này) trao quyền khởi kiện cho hiệp hội gồm hơn 2500 phụ nữ cao tuổi, trong khi từ chối tư cách nạn nhân của bốn cá nhân khởi kiện riêng. Trong khi nội dung về nghĩa vụ khí hậu đã được thảo luận rộng rãi, vẫn còn khoảng trống nghiên cứu liên quan đến tư cách khởi kiện của hiệp hội và tính nhất quán của nó với Điều 34 của Công ước Châu Âu về Nhân quyền (ECHR). Sử dụng phương pháp nghiên cứu học thuyết, nghiên cứu này phân tích các tiêu chí của Tòa án về tư cách khởi kiện tập thể trong tương quan với truyền thống bác bỏ tư cách kiện sử dụng *actio popularis* (khởi kiện vì lợi ích trật tự công cộng). Bài viết cho thấy, trong khi Tòa án duy trì ngưỡng yêu cầu cao đối với các cá nhân, họ đã thiết lập các yêu cầu mang tính định tính cho các hiệp hội, dựa trên nền tảng của nguyên tắc hỗ trợ ngang và công lý liên thế hệ. Bài viết kết luận rằng cách tiếp cận kép này thể hiện một sự thích nghi cần thiết về mặt thủ tục trước những thách thức của

¹ Tác giả liên hệ, Email: k64.2516650018@ftu.edu.vn

cuộc khủng hoảng khí hậu. Tuy nhiên, các án lệ sau đó như vụ *Cannavacciuolo v. Italy* cho thấy rủi ro về vấn đề ngoại lệ khí hậu.

Từ khóa: *Klima Seniorinnen*, kiện tụng về khí hậu, tư cách khởi kiện cho hiệp hội

THE ASSOCIATION STANDING IN *KLIMASENIORINNEN*: A NEW GATEWAY FOR CLIMATE LITIGATION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Abstract

Through the watershed moment in climate litigation of *Verein KlimaSeniorinnen Schweiz v. Switzerland*, this paper critically examines the European Court of Human Right (ECtHR or the Court)'s innovative association standing doctrine, which granted standing to an association of over 2,500 elderly women while denying victim status to the four individual applicants. While the merits of climate duties are extensively discussed, a significant research gap remains regarding the association standing and its consistency with Article 34 of the European Convention on Human Rights (ECHR). Using a doctrinal methodology, this study analyzes the Court's innovative criteria for collective standing against its traditional rejection of *actio popularis*. The research finds that while the Court maintains a high threshold for individuals, it has established a qualitative representativeness for associations, grounded in horizontal subsidiarity and intergenerational justice. The paper concludes that this dual approach represents a necessary procedural adaptation to the unique challenges of the climate crisis, though subsequent case law like *Cannavacciuolo v. Italy* suggests a risk of climate exceptionalism that may hinder doctrinal coherence.

Key words: *Klima Seniorinnen*, climate litigation, association standing

1. Introduction

On April 9th, 2024, the Grand Chamber of the ECtHR delivered a groundbreaking judgement in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.² It was the first time the ECtHR has taken a position on the issue of climate change, siding with the applicants. The Court ruled in favour of elderly Swiss women who said their government's efforts to combat climate change had been inadequate and put them at risk of dying during heatwaves and found that

² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (*KlimaSeniorinnen v. Switzerland*) App no 53300/20 (ECtHR, 9 April 2024).

Switzerland had breached its positive duties under the ECHR in a near-unanimous decision because its climate policy failed to meet the standard of protection required by the ECHR.³

Legal scholarship shows that this case was groundbreaking due to a new test for association standing in climate cases while recognizing a positive obligation under Article 8 to protect individuals from serious adverse effects of climate change and a violation of Article 6(1) for failing to give the association real access to justice. Focusing on association standing, Keller et al. writes in response to *KlimaSeniorinnen* that the emerging approach after the case is to treat NGOs and associations as central climate justice actors, justify broader standing via Aarhus-based procedural rights, and push the ECtHR to abandon its restrictive, fragmented standing doctrine in environmental and climate litigation.⁴ Sefkow-Werner approaches the case with a conceptual shift of how through associations collective human-rights harms from climate change can be enforced.⁵ Savaresi mapped broader implications for climate litigation at national, regional and international levels, clarifying how human rights bodies are shaping climate governance debates.⁶ While existing scholarship focusing on association standing extensively discusses climate duties, this research focuses on the procedural innovation of granting standing to associations through some theoretical anchors.

This research addresses the central question: How does the new association standing in climate cases reconcile with the Convention's prohibition of *actio popularis*? To answer this, the study evaluates the traditional barriers to environmental standing, analyzes the *KlimaSeniorinnen* criteria, and examines the theoretical justifications of horizontal subsidiarity and intergenerational equity.

This paper employs a doctrinal method, involving a systematic analysis of ECHR provisions, the judgement and judges' opinions in *KlimaSeniorinnen*, the Court's evolving jurisprudence

³ Andreas Hösli and Meret Rehmann, 'Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: The European Court of Human Rights' Answer to Climate Change' (2024) 14 Climate Law 263. <<https://doi.org/10.1163/18786561-bja10055>>

⁴ Helen Keller and Viktoriya Gurash, 'Expanding NGOs' Standing: Climate Justice through Access to the European Court of Human Rights' (2023) 14 Journal of Human Rights and the Environment 194 <<https://www.elgaronline.com/view/journals/jhre/14/2/article-p194.xml>> accessed 21 March 2026.

⁵ Violetta Sefkow-Werner, 'Consistent Inconsistencies in the ECtHR's Approach to Victim Status and Locus Standi' (2025) 16 European Journal of Risk Regulation 814 <<https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/consistent-inconsistencies-in-the-ecthrs-approach-to-victim-status-and-locus-standi/B24FED6C3231FC9EC3B7D2CC603FF2F8>> accessed 21 March 2026.

⁶ Annalisa Savaresi, 'Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making Climate Change Litigation History' (2025) 34 Review of European Comparative & International Environmental Law 279 <<https://onlinelibrary.wiley.com/doi/10.1111/reel.12612>> accessed 21 March 2026.

(from *Fadeyeva* to *Cannavacciuolo*), and interpretations from related scholarship. The method is applied by contrasting the old pollution paradigm with the new global climate reality to identify shifts in legal interpretation.

2. The evolution of climate standing

2.1. *The traditional victim status barrier*

While international climate obligations may be officially documented, a legal duty is effectively hollow if it cannot be strictly enforced. For these obligations to transition from mere paper promises to meaningful mandates, accessible legal remedies are vital. Without the ability to seek justice in a courtroom, there is little to ensure that states actually follow through on their environmental commitments or remain accountable for their inaction. The path to successful climate litigation, however, is obstructed by several complex hurdles. Beyond the scientific difficulty of proving direct causality and defining the exact reach of a state's human rights responsibilities, the most daunting barrier is often procedural. Specifically, the strict *locus standi* (legal standing) requirements maintained by international and regional human rights bodies frequently block individuals from even entering the courtroom, making it incredibly difficult for those harmed by climate-related violations to find the legal redress they deserve.⁷

Locus standi requirements can be found in Articles 34 and 35 of the ECHR, with the standard for admissibility generally centering on whether an applicant possesses victim status. To clear this hurdle, a person must prove they have a sufficient and direct concern regarding the state's behavior. In practical terms, this means the applicant must demonstrate that they have suffered a specific and concrete harm resulting from a signatory state's actions or failures. Furthermore, this injury must involve a substantive right explicitly protected by the treaty over which the court or committee has jurisdiction while also having exhausted all local remedies. The traditional requirement for victim status in human rights law creates a significant barrier in climate litigation because it demands that an applicant be impacted more specifically than the general public. While this individualized harm standard works for localized legal disputes, it clashes with the reality of environmental degradation, which typically harms entire communities or societies simultaneously. Because climate impacts are often gradual and collective rather than isolated, it is difficult for a

⁷ Irthe JM de Jong, 'Beyond the Turn to Human Rights: A Call for an Intersectional Climate Justice Approach' [2023] *The International Journal of Human Rights* 1
<<https://www.tandfonline.com/doi/full/10.1080/13642987.2023.2297315?scroll=top&needAccess=true#abstract>>
accessed 21 March 2026.

single person to prove they are suffering in a way that is legally distinct from the rest of the population.⁸

This creates a paradox: since climate change is a global phenomenon that technically affects everyone, applicants struggle to distinguish their personal injuries from the general background noise of a warming planet. Even though the actual effects are experienced in vastly different ways and unequal amounts, the legal focus on isolated, specific concern makes it incredibly hard to establish a concrete injury that the law recognizes.⁹

2.2. The prohibition of *actio popularis*

Article 34 of the European Convention on Human Rights provides that "the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation" of Convention rights. This embodies a fundamental limitation of the Court's jurisdiction: the prohibition of *actio popularis*, which means that the Court cannot hear complaints brought in by the general interests and must be complaints brought in by an identifiable victim whose rights are directly affected.¹⁰

This harsh victim status requirement ensures the Court's subsidiary role to domestic courts and law, respecting state sovereignty by reserving ECtHR intervention for failures of effective remedies or rule-of-law breakdowns.¹¹ Functionally, treating the Strasbourg supervisory system as ancillary to national mechanisms is a necessity in view of the limited resources at the Court's disposal, requiring domestic judges and administrative bodies to act as first-line defenders of Convention rights and freedoms. However, despite the Court's claims of the Convention's subsidiary nature as a supervision machinery to national human rights protection systems, the ECtHR reviews domestic legislation, administrative practices, and judicial rulings using distinctive methods of treaty analysis – such as the doctrine of effectiveness, the principle of autonomous interpretation, and an evolving understanding of protected rights and freedoms when a dispute comes before it. The ECtHR has arrogated to itself the power to monitor compliance with its most far-reaching judgments ordering or recommending remedies that penetrate deeply into the

⁸ Ibid.

⁹ Ibid.

¹⁰ George Letsas, 'Did the Court in *Klimaseniorinnen* Create an *Actio Popularis*?' (EJIL: Talk! 13 May 2024) <<https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/>> accessed 21 March 2026.

¹¹ Alain Zysset and Başak Çalı, 'Exhausting Domestic Remedies or Exhausting the Rule of Law? Revisiting the Normative Basis of Procedural Subsidiarity in the European Convention on Human Rights' (2023) 14 Transnational Legal Theory 157 <<https://www.tandfonline.com/doi/full/10.1080/20414005.2023.2232601#d1e293>> accessed 21 March 2026.

fabric of national law, a power that was previously the exclusive province of the Council of Europe's political bodies. The Court's case law reflects diffuse embeddedness as a deep structural principle of the European human rights regime, authorizing the ECtHR to adopt a more interventionist stance when the justifications for deference to national decision-makers are diminished or absent. Helfer argues that this embeddedness principle of the Court is an appropriate aspiration for the world's most advanced human rights system – a system that has proved its ability to evolve institutionally, politically, and legally, and whose member states have now unanimously incorporated international human rights standards into their respective national laws.¹² Therefore, in the groundbreaking *KlimaSeniorinnen* case, the Court's rulings were no exception, representing one of the first examples of an international court giving an international perspective to the national constitutional law question of the role of courts in the context of climate change.¹³

The critical issue that remains in the *KlimaSeniorinnen* case was the Court's treatment of *locus standi* for the association. The Court suggested that in the context of climate change, traditional victim status requirements posed challenges to the complex and global nature of climate change; however, granting standing to all would risk the ECHR transforming into an *actio popularis* mechanism. The Court took an innovative approach to the matter, subjecting individual applicants to a stricter test while setting a lower bar for associational standing. The Court found that the *KlimaSeniorinnen* association had standing to bring the complaint and stressed that it was not opening the door to *actio popularis* action but rather reinforced the 'evolution of civil society's role' in addressing climate impact.¹⁴

¹² LR Helfer, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19 *European Journal of International Law* 125 <<https://academic.oup.com/ejil/article/19/1/125/430843>> accessed 21 March 2026.

¹³ Liam Siry, 'The Climate in Strasbourg – the Judgments and Their Impact on Global Climate Law' (2025) 32 *Maastricht Journal of European and Comparative Law* 335 <<https://doi.org/10.1177/1023263X251344459>>

¹⁴ Margaretha Wewerinke-Singh, 'Climate Protection Obligations under the European Convention on Human Rights: The *KlimaSeniorinnen* Judgment' (2025) 21 *European Constitutional Law Review* 356 <<https://resolve.cambridge.org/core/journals/european-constitutional-law-review/article/climate-protection-obligations-under-the-european-convention-on-human-rights-the-klimasenioren-judgment/B075B7F6A0D22B08E98430999EF0DB91>>.

2.3. The *KlimaSeniorinnen* shift in environmental standing

Before *KlimaSeniorinnen*, litigation to compel governments to reduce GHG emissions per the Paris Agreement was fraught with obstacles due to the interplay of physics of climate change and the rationale of the judicial process.¹⁵

The *KlimaSeniorinnen* judgment reflects a modern scientific consensus that global temperature increases are fundamentally driven by the total accumulation of greenhouse gases over several centuries. This reality means that many consequences of climate change will endure for hundreds of years, even if all carbon dioxide emissions were to cease immediately. Scientific evidence highlights a nearly linear correlation between these cumulative emissions and the resulting rise in global temperatures. Furthermore, because of the Earth's significant heat capacity, there is a delayed reaction in the climate system; it takes approximately 10.2 years for the full warming effect of CO₂ emissions to manifest. This creates a legacy of environmental change that remains largely irreversible for a millennium after emissions have stopped.¹⁶

This scientific framework represents a significant departure from the European Court of Human Rights' traditional environmental jurisprudence, which historically required individuals to prove direct and personal harm that met a specific severity threshold. For example, in the *Fadeyeva* case, the applicant succeeded because her residence within a sanitary security zone led to documented health issues.¹⁷ In contrast, the claim in *Kyrtatos v. Greece* failed because the applicant could not demonstrate that the environmental damage specifically interfered with his private life or home.¹⁸ Under this older legal paradigm, the Court looked for a clear, localized connection between a specific source of pollution and the people affected, typically seeking solutions that could be easily identified and applied directly at the point of origin.¹⁹

In reviewing the standing of applicant associations, the Court initially reaffirmed its established legal principles, which generally prohibit *actio popularis*. This means that associations, much like individuals, cannot bring a case solely in the public interest without a specific victim. For an association to litigate in its own name, it must demonstrate that it has personally suffered a

¹⁵ Johannes Reich, 'KlimaSeniorinnen and Choosing between Imperfect Options: Incorporating International Climate Change Law to Maintain the ECHR's Relevance amid the Climate Crisis' [2024] Social Science Research Network. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4800443>.

¹⁶ Ibid.

¹⁷ *Fadeyeva v Russia* App no 55723/00 (ECtHR, 9 June 2005).

¹⁸ *Kyrtatos v Greece* App no 41666/98 (ECHR, 22 May 2003).

¹⁹ n 7.

human rights violation and that the specific Convention right invoked is one that can be applied to a legal entity, rather than being reserved exclusively for natural persons.²⁰

However, the Court has developed specific exceptions to this rule, occasionally permitting representative applications where an association asserts a violation on behalf of individuals who are the actual victims. This recognition stems from a practical understanding of modern legal challenges, as highlighted in the *Gorraiz Lizarraga* case. In that instance, the Court acknowledged that in highly complex disputes, collective action through an association may be the only viable or effective method for individuals to protect and defend their fundamental rights against large-scale or systemic issues.²¹

3. Analysis of the new association standing

3.1. The test for KlimaSeniorinnen

The applicant association, Verein KlimaSeniorinnen Schweiz, was granted standing to bring its climate complaint before the Court. The Court justified this innovation on several grounds. First, it recognised the particular relevance of collective action in the context of climate change.²² Climate change is a common concern of humankind with diffuse effects that make individual litigation exceptionally difficult. Second, the Court drew upon the Aarhus Convention, which acknowledges the importance of environmental associations in litigating on behalf of affected persons and the public interest.²³ Third, the Court emphasised the necessity of promoting intergenerational burden-sharing associations that could represent not only current members but also future generations who would otherwise lack a voice.²⁴

The Court established three specific criteria for association standing in climate cases, which the KlimaSeniorinnen association satisfied:²⁵

a. lawfully established

This requirement was uncontroversially met, as Verein KlimaSeniorinnen Schweiz was a duly established association under Swiss law.²⁶

b. has a statutory aim of defending its members' rights against climate change

²⁰ n 5.

²¹ Ibid.

²² *KlimaSeniorinnen v. Switzerland*, para. 489

²³ Ibid., para. 494

²⁴ Ibid., para. 499

²⁵ Ibid., para. 502

²⁶ Ibid., para. 10

The second criterion requires examination of the association's statutory aims and actual activities. The association must pursue objectives that include defense of the human rights of its members or other affected individuals within the jurisdiction concerned against the threat of climate change.²⁷ This requirement serves several functions. First, it distinguishes associations specifically focused on human rights protection from general environmental NGOs with broader mandates. Second, it ensures some connection between the association's *raison d'être* and the rights it seeks to vindicate before the Court.

The Court's application to *KlimaSeniorinnen* was straightforward: the association was "established to promote and implement effective climate protection on behalf of its members".²⁸ However, this criterion raises interpretative questions. How specific must the purpose be? Could an association with a general environmental mandate satisfy it if climate protection has become a core part of its activities? What about associations formed for other purposes that later expand their focus to climate? The judgment provides limited guidance on these questions. In doctrinal proposals, future standing tests focus on the association's current statutory aims and actual activities, not its founding moment; associations can thus grow into a climate-protection purpose if they formalise that shift and consistently act on it.²⁹

c. can be regarded as genuinely qualified and representative of affected individuals

The third criterion is the most substantively significant. The association must be "genuinely qualified and representative of the members or other affected individuals within the jurisdiction concerned, who are subject to specific threats or adverse effects of climate change on their lives, health or well-being".³⁰ What evidence proves representativeness? The Court did not prescribe specific evidentiary requirements, but the *KlimaSeniorinnen* association's characteristics provide guidance: over 2,000 members, all elderly women (a scientifically recognised vulnerable group), distributed throughout Switzerland, all facing heightened risks from heatwaves.³¹ This suggests that size, demographic alignment with affected populations, and geographic scope are relevant considerations.

²⁷ Ibid., para. 502

²⁸ Ibid., para 10

²⁹ Christiane Trüe, 'Economic and Legal Issues of Climate Change in the EU' (2021) 8 European Studies 161.

³⁰ *KlimaSeniorinnen v. Switzerland*, para. 502

³¹ Ibid., paras 10-11

Crucially, the Court held that association standing is "not subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals".³² This meant the association could proceed even though its individual members had been denied standing.

The central paradox of the *KlimaSeniorinnen* judgment is now apparent: how can an association have standing to represent members who individually lack victim status?³³ The Court's answer rests on a conceptual distinction: associations play a distinct role in representing collective interests that transcend the aggregation of individual claims. They serve as "a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change".³⁴

This paradox was sharply criticised by Judge Eicke in his partly dissenting opinion. In his view, since the individual applicants only failed on evidentiary grounds, not because it was intrinsically impossible for individuals to bring climate claims, there was no necessity for expanding association standing.³⁵ The innovation was, for him, premature and insufficiently grounded in the Convention's text.³⁶ His critique of the Court creating *actio popularis* rested on several grounds. First, since the individual applicants only failed on evidentiary grounds—not because it was intrinsically impossible for individuals to bring climate claims—there was no necessity for expanding association standing.³⁷ Second, he found no basis in Article 8 or any Convention provision for this innovation.³⁸ Third, he warned that the Court had "tried to run before it could walk" and that the ruling risked putting states in defensive mode rather than encouraging democratic climate policymaking.³⁹ Eicke's concerns reflect a broader anxiety about judicial overreach.

Defenders of the Court's approach, however, point to the unique characteristics of climate change: its irreversibility, its diffuse harm, and the urgency of action required. The catch of climate litigation, where everyone is affected but no one can prove sufficiently individualised harm,

³² *Ibid.*, para 502

³³ *n* 10.

³⁴ *KlimaSeniorinnen v. Switzerland*, para. 523

³⁵ *KlimaSeniorinnen v. Switzerland, Partly Concurring Partly Dissenting Opinion Of Judge Eicke*, para. 41.

³⁶ *Ibid.*, para. 44.

³⁷ *Ibid.*, para. 41, para. 44.

³⁸ *Ibid.*, para 65.

³⁹ *Ibid.*, paras. 68-69.

demanded a creative response. By creating a loophole for associations with three criteria while formally maintaining the prohibition on *actio popularis*, the Court attempted to balance access to justice with procedural restraint.⁴⁰

3.2. Theoretical justifications

George Letsas offers a robust defence of the Court, arguing that criticisms based on *actio popularis* rest on a conceptual confusion. He contends that the Court's floodgates concern was the wrong kind of reason. Under the Convention system, if climate change affects the rights of many people, they are all victims; the number is irrelevant to standing. The key distinction is whether a claim is brought on behalf of victims or solely in the public interest.⁴¹

Letsas reconstructs a stronger justification through the lens of future generations. He notes that the judgment repeatedly emphasises intergenerational considerations: future generations are likely to bear an increasingly severe burden, there is a risk that short-term interests will prevail,⁴² and future generations face representational disadvantage.⁴³ Collective action through associations, therefore, represents one of the only means through which the voice of those at a distinct representational disadvantage can be heard.⁴⁴

Corina Heri adds further nuance by distinguishing between public interest litigation (which may be legitimate) and prohibited *actio popularis*. She characterises the *KlimaSeniorinnen* judgment as a cautious model sitting somewhere between an individual judgment and an advisory opinion. The Court, she argues, was overall cautious or deferential to State decisions while also setting important parameters for rights-based litigation. This framing suggests the Court attempted to chart a middle course, opening access to justice without sanctioning general policy challenges.⁴⁵

Alberto Nicòtina has proposed the principle of horizontal subsidiarity as the most fitting theoretical framework to understand the Court's innovation.⁴⁶ This theory posits that civil society

⁴⁰ Lianne Baars and Jolein Holtz, 'The European Court of Human Rights & Climate Cases: Potential Drawbacks and Path Forward' (Human Rights Here 15 April 2024) <<https://www.humanrightshere.com/post/the-european-court-of-human-rights-and-climate-cases-potential-drawbacks-and-path-forward>> accessed 21 March 2026.

⁴¹ n 10.

⁴² *KlimaSeniorinnen v. Switzerland*, para. 420.

⁴³ *Ibid.*, para. 484, para 489.

⁴⁴ *Ibid.*, para. 489.

⁴⁵ Corina Heri, 'The ECtHR's *KlimaSeniorinnen* Judgment: A Cautious Model for Climate Litigation' [2025] Spanish Yearbook of International Law 311 <<https://www.sybil.es/sybil/article/view/3409>> accessed 21 March 2026.

⁴⁶ Alberto Nicòtina, 'Ending the Climate Crisis through Rights-Based Climate Litigation? - Climate Litigation' (26 November 2024) <<https://climatelitigation.uva.nl/news/ending-the-climate-crisis-through-rights-based-climate-litigation/>> accessed 21 March 2026.

organizations serve as subsidiary social spheres that both complement and ensure accountability for public authorities in pursuing collective interests. Unlike majoritarianism, which privileges quantitative interest representation through electoral processes, horizontal subsidiarity emphasizes qualitative representativeness. The Court's distinction, granting standing to the association while denying it to individuals, reflects precisely this move from quantitative to qualitative assessment. The KlimaSeniorinnen association did not merely aggregate individual claims but represented a collective interest in climate protection that transcends any single member's case. Strategic climate litigation thus becomes the means through which subsidiary social spheres enforce their legitimate interests against governmental failures.⁴⁷

Angela Hefti offers an intersectional critique, arguing that the Court could have more robustly engaged with the applicants' age and gender. Swiss women were enfranchised only in 1971 nationally, with the last canton granting voting rights in 1990, meaning elderly Swiss women experienced a lifetime of exclusion from environmental decision-making. Their age, gender, and potential disabilities intersect to create unique climate vulnerability that warrants recognition. The Court limited its analysis to health-related vulnerability, overlooking the socially constructed dimensions of heatwave impacts on elderly women. Yet intersectionality precisely describes the high intensity of exposure required for victim status, and its emphasis on including disadvantaged voices aligns with the Court's access-to-justice concerns. Future litigants may draw on intersectional arguments to meet the individual victim-status threshold.⁴⁸

The judgment's repeated emphasis on intergenerational considerations provides another theoretical anchor. The Court explicitly invoked intergenerational burden-sharing rather than the more familiar term intergenerational equity, echoing the German Federal Constitutional Court's Neubauer decision which found that present generations must not unilaterally offload emissions reduction burdens onto future generations. This framing allows the Court to justify mandating immediate emissions reductions by reference to future impacts. As the judgment notes, future

⁴⁷ Alberto Nicòtina, 'The Legal Standing of Associations in Climate Litigation between Majoritarianism and Representativeness: Towards a Theory of Subsidiary Social Spheres' (16 December 2024) <<https://climatelitigation.uva.nl/event/the-legal-standing-of-associations-in-climate-litigation-between-majoritarianism-and-representativeness-towards-a-theory-of-subsidiary-social-spheres/>> accessed 21 March 2026.

⁴⁸ Angela Hefti, 'Intersectionality and Standing in Climate-Related Human Rights Cases - Harvard Law School | Human Rights Program' (22 April 2024) <<https://hrp.law.harvard.edu/intersectionality-standing-and-climate-change-and-human-rights/>> accessed 21 March 2026.

generations are likely to bear an increasingly severe burden,⁴⁹ face representational disadvantage,⁵⁰ and require collective action through associations as "one of the only means through which the voice of those at a distinct representational disadvantage can be heard".⁵¹ The KlimaSeniorinnen association implicitly represented not only its elderly members but also future generations who would otherwise lack standing before the Court.⁵² Letsas reconstructs this as consistent with existing victim-status jurisprudence: the Convention recognises "potential victims" where risk is high and consequences severe and future generations meet these conditions given scientific certainty about climate impacts. The association thus becomes a vehicle for intergenerational justice.⁵³

4. Subsequent developments

4.1. *Fliegenschnee and Others v. Austria*

The first significant test of the *KlimaSeniorinnen* standing doctrine came in *Fliegenschnee and Others v. Austria*, decided in February 2026. The application was brought by three individuals and an environmental association, seeking an ordinance prohibiting fossil fuel sales. The applicants' request had been rejected by the Federal Minister, and both the Regional Administrative Court and the Austrian Constitutional Court upheld this rejection, finding the Minister lacked constitutional authority to issue such a ban. The ECtHR declared the application inadmissible, but the decision provided important clarification of the *KlimaSeniorinnen* framework. The individual applicants failed to meet the high intensity of exposure threshold, with the Court emphasising that medical evidence must show both diagnosis and severity affecting each applicant individually.⁵⁴

The treatment of the association in *Fliegenschnee* reveals continuing uncertainty. The association was lawfully established under Austrian law and had standing in domestic environmental proceedings under the Environmental Impact Assessment Act. The Court accepted that this satisfied the first part of the *KlimaSeniorinnen* criteria—lawful establishment and

⁴⁹ *KlimaSeniorinnen v. Switzerland*, para. 420.

⁵⁰ *Ibid.*, para. 484, para 489.

⁵¹ *Ibid.*, para 489.

⁵² Katalin Sulyok, 'What Does the European Court of Human Rights' *KlimaSeniorinnen* Judgment Mean for Future Generations? Some Quick Reflections – University of Auckland' (2024) <<https://www.cloud.test.auckland.ac.nz/en/law/our-research/research-centres/new-zealand-centre-for-environmental-law/opinion-and-analysis/What-does-the-european-court-of-human-rights-klimasenioren-judgment-mean.html>> accessed 21 March 2026.

⁵³ n 10.

⁵⁴ Anna Lumerding and Melanie Maurer, 'High Thresholds and Wide Margins' [2026] *Verfassungsblog* <<https://verfassungsblog.de/high-thresholds-and-wide-margins/>>.

dedicated environmental purpose. However, the Court questioned whether the association could demonstrate a "dedicated purpose of defending human rights" and whether it could be regarded as "representative" of affected individuals. Critically, no statutes or membership information were submitted to substantiate these elements. The Court ultimately avoided a definitive ruling, declaring the complaints inadmissible on other grounds and finding it unnecessary to determine the association's standing.⁵⁵

This contrasts sharply with *Greenpeace Nordic v. Norway*, where the Court had no problem accepting the standing of one of the associations despite it not being a membership organisation. The inconsistency suggests that the representativeness requirement remains poorly defined. Notably, the *Fliegenschnee* applicants lodged their complaint before *KlimaSeniorinnen* was decided, meaning they could not have known what evidence would later be required.⁵⁶

4.2. Cannavacciuolo v. Italy

In *Cannavacciuolo and Others v. Italy*, the Court drew a sharp distinction between climate cases and environmental pollution cases. The case concerned the Terra dei Fuochi (Land of Fires) region in Italy, plagued by decades of illegal waste dumping and burning by organised criminal groups.⁵⁷ The Court found a violation of Article 2 (right to life) but refused standing to the applicant associations, holding that *KlimaSeniorinnen*'s association standing doctrine was limited to the exceptional circumstances of climate change.⁵⁸ The Court was well aware of its contradictions, stating that only individuals, not associations, can claim to be affected by pollution⁵⁹ even when these associations were granted standing by national courts unlike *KlimaSeniorinnen*. Judge Krenč points out: "If it is not for the Court to question a State's determination of specially affected areas, then why deny standing to an association permitted to represent victims at the domestic level? Barring such associations contravenes subsidiarity". Thus, the Court's position creates a climate exceptionalism that may undermine doctrinal coherence that was already low in *KlimaSeniorinnen*.⁶⁰

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ *Cannavacciuolo and Others v. Italy*, App no 43633/11 (ECtHR, 5 September 2013)

⁵⁸ Ibid., paras. 220-221.

⁵⁹ Ibid., paras. 218.

⁶⁰ Ignacio Portela Giráldez, 'Not a Leg to Stand On: Assessing the European Court of Human Rights' Divergent Approach to Standing in the *KlimaSeniorinnen* and *Cannavacciuolo* Cases' (Opinio Juris 16 May 2025) <<https://opiniojuris.org/2025/05/16/not-a-leg-to-stand-on-assessing-the-european-court-of-human-rights-divergent-approach-to-standing-in-the-klimaseniorinnen-and-cannavacciuolo-cases/>> accessed 21 March 2026.

4.3. Future outlook

Several critical questions remain unanswered. First, what evidence proves dedicated purpose? Must it be shown through statutory aims alone, or must activities be demonstrated? Second, what constitutes representativeness? The inconsistent outcomes in *Fliegenschnee* suggests ongoing uncertainty. Third, can non-membership organisations ever satisfy the criteria? Fourth, and most fundamentally, does the doctrine apply only to climate change, or might it extend to other large-scale environmental harm? The Court's categorical exclusion in *Cannavacciuolo* suggests a narrow scope.⁶¹

Several pending cases may provide further clarification. *Müllner v. Austria* could become the first successful individual application, potentially shedding light on the "high intensity of exposure" threshold. *Ecodefense & Other NGOs v. Russia* raises indigenous rights and property protection issues, while *The Norwegian Grandparents' Climate Campaign v. Norway* challenges petroleum licensing. These cases will determine whether *KlimaSeniorinnen* opens a genuine gateway for climate litigation or merely creates procedural complexity.⁶²

5. Conclusion

The *KlimaSeniorinnen* judgment represents a watershed moment in the ECtHR's jurisprudence, fundamentally reshaping access to justice in climate litigation. This paper has examined the Court's innovative association standing doctrine through multiple lenses: its departure from orthodox standing principles, the detailed criteria established, the vigorous debate over whether it creates a de facto *actio popularis*, its theoretical foundations, and its application in subsequent case law.

In the context of climate change, the Court faced a choice: maintain doctrinal purity at the cost of denying access to justice, or adapt its jurisprudence to meet the demands of the climate crisis. Climate change is fundamentally different from the harms the Convention system was designed to address—it is diffuse, global, intergenerational, and irreversible. The traditional model of individual victim status, developed for localised pollution cases and discrete human rights violations, could not simply be transposed to this new context. The Court chose adaptation. Whether this choice was wise, whether the particular form of adaptation was justified, and whether the new doctrine proves workable in practice will be debated for years to come. What is already

⁶¹ Ibid.

⁶² n 54.

clear is that *KlimaSeniorinnen* has fundamentally altered the landscape of climate litigation before the European Court of Human Rights. The gateway is open. The question now is who will pass through it, and what they will find on the other side.

References

I. Case law

Cannavacciuolo and Others v Italy App no 43633/11 (ECtHR, 5 September 2013)

Fadeyeva v Russia App no 55723/00 (ECtHR, 9 June 2005).

Fliegenschnee and Others v Austria App no 27814/10 (ECtHR, 16 January 2014)

Kyrtatos v Greece App no 41666/98 (ECtHR, 22 May 2003).

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland App no 53300/20 (ECtHR, 9 April 2024).

II. Academic articles

Baars L and Holtz J, 'The European Court of Human Rights & Climate Cases: Potential Drawbacks and Path Forward' (*Human Rights Here* 15 April 2024) <<https://www.humanrightshere.com/post/the-european-court-of-human-rights-and-climate-cases-potential-drawbacks-and-path-forward>> accessed 21 March 2026

de Jong IJM, 'Beyond the Turn to Human Rights: A Call for an Intersectional Climate Justice Approach' [2023] *The International Journal of Human Rights* 1 <<https://www.tandfonline.com/doi/full/10.1080/13642987.2023.2297315?scroll=top&needAccess=true#abstract>> accessed 21 March 2026

Giráldez IP, 'Not a Leg to Stand On: Assessing the European Court of Human Rights' Divergent Approach to Standing in the *KlimaSeniorinnen* and *Cannavacciuolo* Cases' (*Opinio Juris* 16 May 2025) <<https://opiniojuris.org/2025/05/16/not-a-leg-to-stand-on-assessing-the-european-court-of-human-rights-divergent-approach-to-standing-in-the-klimaseniorinnen-and-cannavacciuolo-cases/>> accessed 21 March 2026

Hefti A, 'Intersectionality and Standing in Climate-Related Human Rights Cases - Harvard Law School | Human Rights Program' (22 April 2024) <<https://hrp.law.harvard.edu/intersectionality-standing-and-climate-change-and-human-rights/>> accessed 21 March 2026

Helfer LR, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19 *European Journal of*

International Law 125 <<https://academic.oup.com/ejil/article/19/1/125/430843>> accessed 21 March 2026

Heri C, 'The ECtHR's KlimaSeniorinnen Judgment: A Cautious Model for Climate Litigation' [2025] Spanish Yearbook of International Law 311 <<https://www.sybil.es/sybil/article/view/3409>> accessed 21 March 2026

Hösli A and Rehmann M, 'Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: The European Court of Human Rights' Answer to Climate Change' (2024) 14 Climate Law 263

Keller H and Gurash V, 'Expanding NGOs' Standing: Climate Justice through Access to the European Court of Human Rights' (2023) 14 Journal of Human Rights and the Environment 194 <<https://www.elgaronline.com/view/journals/jhre/14/2/article-p194.xml>> accessed 21 March 2026

Letsas G, 'Did the Court in Klimaseniorinnen Create an Actio Popularis?' (*EJIL: Talk!* 13 May 2024) <<https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/>> accessed 21 March 2026

Lumerding A and Maurer M, 'High Thresholds and Wide Margins' [2026] Verfassungsblog <<https://verfassungsblog.de/high-thresholds-and-wide-margins/>>

Nicòtina A, 'Ending the Climate Crisis through Rights-Based Climate Litigation? - Climate Litigation' (26 November 2024) <<https://climatelitigation.uva.nl/news/ending-the-climate-crisis-through-rights-based-climate-litigation/>> accessed 21 March 2026

Nicòtina A, 'The Legal Standing of Associations in Climate Litigation between Majoritarianism and Representativeness: Towards a Theory of Subsidiary Social Spheres' (16 December 2024) <<https://climatelitigation.uva.nl/event/the-legal-standing-of-associations-in-climate-litigation-between-majoritarianism-and-representativeness-towards-a-theory-of-subsidiary-social-spheres/>> accessed 21 March 2026

Reich J, 'KlimaSeniorinnen and Choosing between Imperfect Options: Incorporating International Climate Change Law to Maintain the ECHR's Relevance amid the Climate Crisis' [2024] Social Science Research Network

Savaresi A, 'Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making Climate Change Litigation History' (2025) 34 Review of European Comparative & International Environmental Law 279 <<https://onlinelibrary.wiley.com/doi/10.1111/reel.12612>> accessed 21 March 2026

Sefkow-Werner V, ‘Consistent Inconsistencies in the ECtHR’s Approach to Victim Status and *Locus Standi*’ (2025) 16 European Journal of Risk Regulation 814 <<https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/consistent-inconsistencies-in-the-ecthrs-approach-to-victim-status-and-locus-standi/B24FED6C3231FC9EC3B7D2CC603FF2F8>> accessed 21 March 2026

Siry L, ‘The Climate in Strasbourg – the Judgments and Their Impact on Global Climate Law’ (2025) 32 Maastricht Journal of European and Comparative Law 335

Sulyok K, ‘What Does the European Court of Human Rights’ *KlimaSeniorinnen* Judgment Mean for Future Generations? Some Quick Reflections – University of Auckland’ (2024) <<https://www.cloud.test.auckland.ac.nz/en/law/our-research/research-centres/new-zealand-centre-for-environmental-law/opinion-and-analysis/What-does-the-european-court-of-human-rights-klimaseniorinnen-judgment-mean.html>> accessed 21 March 2026

Trüe C, ‘Economic and Legal Issues of Climate Change in the EU’ (2021) 8 European Studies 161

Wewerinke-Singh M, ‘Climate Protection Obligations under the European Convention on Human Rights: The *KlimaSeniorinnen* Judgment’ (2025) 21 European Constitutional Law Review 356 <<https://resolve.cambridge.org/core/journals/european-constitutional-law-review/article/climate-protection-obligations-under-the-european-convention-on-human-rights-the-klimaseniorinnen-judgment/B075B7F6A0D22B08E98430999EF0DB91>>

Zysset A and Çalı B, ‘Exhausting Domestic Remedies or Exhausting the Rule of Law? Revisiting the Normative Basis of Procedural Subsidiarity in the European Convention on Human Rights’ (2023) 14 Transnational Legal Theory 157 <<https://www.tandfonline.com/doi/full/10.1080/20414005.2023.2232601#d1e293>> accessed 21 March 2026