

## Social Sector Hotline

April 15, 2024

### EUROPEAN COURT OF HUMAN RIGHTS LANDMARK CLIMATE CHANGE JUDGMENT AND ITS IMPACT ON INDIA

- The European Court of Human Rights recently, delivered a landmark judgment in the case of *Verein LimnaSeniorinnen Schweiz and Others v. Switzerland*, establishing a precedent for holding governments accountable for inadequate climate action.
- The verdict highlights the intersection of human rights and environmental protection, emphasizing the duty of states to adopt and implement measures to mitigate adverse effects of climate change.
- The ruling has global implications, empowering citizens and advocacy groups worldwide to challenge governments' climate commitments, highlighting the urgency of climate action and the legal obligations of states to protect their citizens' rights.

#### INTRODUCTION

On April 9, 2024, the European Court of Human Rights ("ECHR") delivered a landmark judgment in the case of *Verein LimnaSeniorinnen Schweiz and Others v. Switzerland*<sup>1</sup> holding profound implications for climate litigation worldwide. The case, brought by a group of four women and a Swiss association known as "*KlimaSeniorinnen*," (Senior Women for Climate Protection Switzerland), has drawn attention to the intersection of human rights law and environmental protection, establishing a significant precedent for a new era in legal accountability for climate action. This article provides an in-depth analysis of the ECHR verdict and explores its broader implications for global climate governance, with a particular focus on its relevance in the Indian legal landscape.

#### THE ECHR VERDICT

The ECHR ruling, delivered on April 9, 2024, represents a pivotal moment in the fight against climate change. In the case brought by the group "*KlimaSeniorinnen*" and supported by Greenpeace and four individual women, sheds light on Switzerland's inadequate response to climate change.

The plaintiffs after exhausting all domestic remedies in Switzerland, filed a case against the Swiss government before ECHR, arguing among other things that their health and quality of life were being threatened by the increasing heat waves exacerbated by the climate change. They argued that despite their duties under the European Convention on Human Rights ("**Convention**"), the Swiss government had failed to take sufficient measures to combat the effects of climate change.

The Court, in the instant case, was compelled for the first time to decide whether the insufficient actions of Member States against climate change could lead to the violation of any human rights of citizens. The Court held that Switzerland's inaction violated Article 8 of the Convention<sup>2</sup>, which guarantees the right to respect for private and family life, mandating effective protection by the State authorities against the serious adverse effects of climate change. Specifically, the Court found that the Swiss government's lack of sufficient measures to mitigate climate change threatened the lives, health, well-being and quality of life of its citizens. The judgment emphasized the duty of states to adopt and implement regulations and measures capable of mitigating the adverse effects of climate change, including the reduction of greenhouse gas emissions with a view of achieving the net-zero emission neutrality principle within the next three decades, in line with their international commitments (most notably the United Nations Framework Convention on Climate Change<sup>3</sup> and the Paris Agreement<sup>4</sup>).

Additionally, on the procedural side, the Court found that Switzerland had also violated the rule of due process as mentioned in Article 6 of the Convention<sup>5</sup> concerning the effective implementation of the mitigation measures under existing domestic laws. The Swiss Courts had not provided convincing reasons why they considered it unnecessary to examine the merits of the complaints and had dismissed them on procedural grounds. According to the Court, the Swiss Courts had failed to provide any convincing reasons as to why they did not consider examining the merits of the complaints filed by the plaintiff and had not taken the association's complaints seriously. As there had been no further legal avenues or safeguards available to the applicant association, or to individual applicants/members of the association, the Court found that there had also been a violation of Article 6 of the Convention.

#### IMPLICATIONS FOR CLIMATE LITIGATION

The ECHR verdict has far-reaching implications for climate litigation worldwide. By establishing a binding legal precedent for all 46 Member States of the Council of Europe, the ruling empowers citizens and advocacy groups to hold governments accountable for their climate commitments. It sets a benchmark for the level of action expected

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from States in addressing climate change, potentially leading to increased legal scrutiny and challenges in jurisdictions across the globe. Furthermore, the judgment strengthens the link between environmental protection and human rights, highlighting the inherent connection between a stable climate and the enjoyment of fundamental rights.

While the ruling directly addresses state actions, it may also indirectly impact private entities, particularly large corporations emitting significant greenhouse gases. While lawsuits against State Governments may not directly influence these corporations, they could precipitate the formulation of strict regulations affecting them. One such example is the requirement for disclosing Scope 3 emissions, which remains a daunting task for many corporations. These legal proceedings could catalyze a shift towards more transparent and accountable environmental practices within the private sector.

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

IMPLICATIONS IN INDIAN CONTEXT

While the ECHR ruling directly impacts European states, its significance extends far beyond the continent. Climate change is a global challenge that requires collective action and legal frameworks to address effectively. The principles enshrined in the ECHR judgment are applicable to countries worldwide, providing a blueprint for climate litigation in diverse legal contexts. The ruling highlights the urgency of climate action and the legal obligations of states to protect the rights of their citizens in the face of environmental threats. As climate change continues to impact communities around the world, the ECHR verdict serves as a rallying cry for greater accountability and responsibility in addressing this existential crisis.

The Indian legal system recognizes the right to a healthy environment as a fundamental right under Article 21 of the Constitution, which guarantees the right to life and personal liberty. In this context, the Supreme Court of India in its recent landmark judgment, in the case of *MK Ranjitsinh and Ors. v. Union of India and Ors.*,<sup>6</sup> recognized a fundamental right to be free from the adverse effects of climate change under Articles 14 and 21 of the Indian Constitution. This decision highlights the Indian legal system's acknowledgement of the right to a healthy environment as a fundamental right intertwined with the broader guarantee of the right to life and personal liberty. Unlike European laws, which impose a positive obligation of state action, the Indian court extrapolates protection from state action via the fundamental rights route. While advocating for a balanced approach in addressing environmental concerns, the judgement emphasizes the need to consider the interconnectedness of climate change with human rights, emphasizing the disproportionate impact on vulnerable communities. It highlights the importance of prioritizing both conservation efforts and sustainable development to safeguard the well-being of present and future generations, particularly in protecting endangered species like the Great Indian Bustard.

CONCLUSION

Despite the landmark nature of the ECHR judgment, significant challenges remain in translating legal victories into tangible climate action. Implementation of ambitious climate policies requires political will, financial resources and societal support. Governments may face resistance from vested interests and competing priorities, hindering progress towards climate resilience and sustainability. However, the ECHR ruling also presents an opportunity for collaboration and innovation in climate governance. It encourages dialogue between stakeholders, fosters greater transparency and accountability and catalyzes transformative change towards a low-carbon future.

The ECHR's landmark judgment on climate change represents a watershed moment in the global fight against environmental degradation. By affirming the rights of individuals to a stable climate and holding governments accountable for their climate commitments, the ruling sets a powerful precedent for climate litigation worldwide. In the Indian context, the judgment reinforces the importance of integrating climate considerations into legal frameworks and policy decisions. As the world grapples with the urgent challenges of climate change, the ECHR verdict serves as a beacon of hope and a catalyst for collective action. It reinforces the imperative of international cooperation, legal innovation and political leadership in addressing one of the greatest threats to humanity and the planet.

– Sehar Sharma and Rahul Rishi

You can direct your queries or comments to the authors.

<sup>1</sup><https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7919428-11026177%22%5D%7D>

<sup>2</sup>Article 8 of the Convention: Right to respect for private and family life (1). Everyone has the right to respect for his private and family life, his home and his correspondence. (2). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>3</sup><https://unfccc.int/>

<sup>4</sup><https://unfccc.int/process-and-meetings/the-paris-agreement>

<sup>5</sup>Article 6 of the Convention: Right to a fair trial (1). In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. (2). Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. (3). Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

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