Supreme Court's DECISION

delivered in Stockholm on 19 February 2025

Case no.
Ö 7177-23

REGISTRAR

Nacka District Court

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PARTIES

Applicant in the District Court

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THE MATTER

Referral of a matter pursuant to Chapter 56, Section 13 of the Code of Judicial Procedure, etc.

DECISION OF THE DISTRICT COURT ON REFERRAL PURSUANT TO CH. 56, SECTION 13 OF THE CODE OF JUDICIAL PROCEDURE

Decision of the Nacka District Court of 20 October 2023 in case B 8304-22.

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THE SUPREME COURT'S RULING

The Supreme Court declares AF action to be inadmissible.

REASONS FOR THE DECISION

Background

1. AF has brought an individual class action against the State before the District Court. He requests, in the first place, a declaration that it constitutes a violation of his rights under the European Convention of Human Rights (ECHR), which entails an obligation to provide redress, that the State is failing to do its fair share of global action to reduce the concentration of greenhouse gases in the atmosphere, to keep the increase in global average temperature to 1.5 degrees compared to pre-industrial levels – by failing to immediately take procedural and substantive measures that are sufficient and adequate to continuously reduce greenhouse gas emissions and to continuously increase the uptake of greenhouse gases by natural carbon sinks – and thereby failing to limit the risk that he will be affected by

adverse consequences of man-made climate change. The failure of the State to immediately take the enumerated procedural and substantive measures constitutes an omission under the law.

2. In the alternative, he requests that the Court should order the State to take measures set out in the application in order to reduce the concentration of greenhouse gas in the atmosphere and thereby limit the increase in the global average temperature to 1.5 degrees compared with pre-industrial levels.

3. In brief, the basis of the claims is as follows. The State's failure to take adequate climate measures constitutes a violation of the rights and freedoms of AF and the members of the class under the ECHR. The rights invoked are the right to life (Article 2), the prohibition of inhuman and degrading treatment (Article 3), the right to respect for private and family life (Article 8), the prohibition of discrimination (Article 14) and the right to respect for one's property (Article 1 of the First Additional Protocol). Corresponding rights in the Charter of Fundamental Rights of the European Union have also been invoked.

4. The State has requested that the action be dismissed.

5. The parties have - with reference to fundamental values of the Swedish constitution, Sweden's obligations under Union and international law and the provisions of Chapter 13 of the Code of Judicial Procedure - expressed different views on the question whether the action is admissible or should be dismissed. In this context, the right to access to court under Article 6 ECHR has been particularly emphasised.

6. AF has further argued that the Swedish class-action institute shall be granted the same representative action function that the ECtHR has ruled should apply to associations that fulfil certain conditions.

7. The District Court, pursuant to Chapter 56, Section 13 of the Code of Judicial Procedure, referred the question of the admissibility of the action to the Supreme Court. The Supreme Court has granted leave to appeal on this issue.

8. The Swedish Institute for Human Rights has submitted an opinion. The Supreme Court has authorised the inclusion of the opinion in the case.

What is at issue

9. At issue are the conditions for bringing an action in the Swedish courts against the State alleging that the State's failure to take adequate measures against climate change constitutes a violation of rights under the ECHR, in particular in the light of the judgment of the European Court of Human Rights (ECtHR) of 9 April 2024 in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20. In that judgment, the ECtHR ruled that Switzerland had violated Article 8 by failing to take sufficient measures to combat climate change, as well as Article 6 by failing to consider a climate-change action brought by an association against the Swiss state. The ECtHR, however, rejected an action brought by individuals.

The ECHR and environmental nuisances

10. The ECHR does not contain a provision that directly addresses environmental nuisances. However, since the 1990s, the ECtHR has developed principles regarding when State action or omission in relation to various environmental nuisances may constitute a violation of various Convention rights (see generally, e.g., *Guide to the case-law of the European Court of Human Rights - Environment*, 31/08/2024). Of particular interest here is the extensive case law on Article 8.

11. Under this Article, everyone has the right to respect for their private and family life and their home. The Article may apply if an environmental nuisance effectively interferes with an individual's enjoyment of his or her right to private and family life or home. The impugned act or omission must have a direct impact on the individual or there must be a real risk of impact. This implies that a relevant causal link is required between, for example, the State's failure and interference with the individual's right under Article 8. Environmental nuisances that affect public natural resources, without interfering with the private sphere of any individual, do not constitute an interference with the rights protected under the Article.

12. For an environmental nuisance to fall within the scope of Article 8, it must be of a serious nature. It must restrict or impede the exercise of the right to private and family life or home by the individuals concerned to a sufficient degree. This assessment is made on a case-by-case basis, taking into account the severity and duration of the nuisance and its impact on the individual's health or quality of life. The fact that an individual is exposed to a serious risk may be sufficient for Article 8 to apply.

13. Contracting States are obliged to take measures against environmental nuisances that interfere with the rights of individuals under Article 8. Case law uses expressions such as the State must take 'necessary', 'all necessary' or 'reasonable and appropriate' measures to protect the rights guaranteed under Article 8. Failure by States to take measures to protect the rights of individuals exposed to environmental nuisances may constitute a violation of rights under Article 8. However, States have a margin of appreciation as to which specific measures should be taken.

Article 8 and climate change

General

14. One issue in *Verein KlimaSeniorinnen* was whether, and, if so, how, the principles developed by the Court on environmental nuisances were to be applied in climate-change litigation. The action was brought by an association and four individuals.

15. On the basis of the evidence adduced, the ECtHR drew certain conclusions about ongoing climate change and its effects, which formed the basis of the review in the case. The Court found that there are sufficient and reliable indications that climate change caused by human activities is occurring and that this climate change poses a serious threat to the enjoyment of human rights guaranteed by the ECHR, inter alia in Article 8. The Court further held that Contracting States are aware of the risks and can take measures to address them effectively. The ECtHR also recognised that limiting the temperature increase to 1.5 degrees above pre-industrial levels and taking urgent action would reduce the relevant risks, but that the global mitigation measures currently in place are not sufficient to achieve the objective. (See § 436.)

16. Furthermore, the ECtHR found that there is convincing scientific evidence that climate change has already contributed to an increase in morbidity and mortality, particularly among more vulnerable groups, and that, in the absence of action by States, climate change risks reaching a point of irreversibility and catastrophe. The Court emphasised that States, which can influence the causes of climate change, have recognised the adverse effects of climate change and have committed themselves to taking the necessary measures to mitigate change (by reducing greenhouse gas emissions) and to taking adaptation measures (to adapt to climate change and reduce its effects). The Court therefore held that there may be a legally relevant causal link between States' failures to address climate change and the harm suffered by individuals. (See § 478.)

17. The Court held that Article 8 must be seen as encompassing a right for individuals to be effectively protected by the State against serious adverse effects of climate change on their life, health, well-being and quality of life (see § 519).

18. At the same time, the Court emphasised that the number of persons whose right to privacy, family life and home may be affected as a result of climate change is unlimited. The Court also emphasised that the failures by Contracting States which may give rise to a violation of, for example, Article 8 relate to general measures which are not limited to certain individuals or certain groups. A claim that a Contracting State has failed to take measures against climate change in violation of, for example, Article 8 would therefore inevitably have effects beyond the rights and interests of a particular individual or group of individuals. It would also be forward-looking in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences. (See § 479.)

19. The Court held that the principles of State liability for environmental nuisances entailing violation of, for example, Article 8 therefore cannot be applied without modification in cases where individuals bring an action against the State concerning climate change. Otherwise, a fundamental principle would be undermined, namely to disallow any action brought by an individual in defence of the public interest (*actio popularis*). (See §§ 481–486.)

20. Mainly against that background, the Court concluded that the assessment of the applicability of Article 8 must be carried out differently depending on whether the action is brought by an individual or by an

association that fulfils certain criteria of, inter alia, representativeness and suitability (see § 520).

Actions by individuals

21. In the case of individuals bringing actions alleging that they have suffered harm or risk of harm resulting from alleged failures by the State to combat climate change, the ECtHR required applicants to show that they are personally and directly affected by the impugned failures. The individual must be subject to a high intensity of exposure to the adverse effects of climate change. The level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant. There must also be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. (See § 520 with reference to § 487.)

22. To ensure the exclusion of *actio popularis*, the threshold for fulfilling these criteria is especially high. The assessment of whether the criteria are met shall be made the concrete circumstances of the case, with due regard to, inter alia, prevailing local conditions and individual specificities and vulnerabilities, the actuality/remoteness and/or probability of the adverse effects of climate change and their specific impact on the life, health or well-being of the applicant. (See § 520 with reference to § 488.)

Actions by associations

23. According to the ECtHR, other considerations apply when an association brings an action on behalf of its members. The Court pointed out, inter alia, that the possibility to turn to associations may be the only means available to individuals to effectively defend their interests, in

particular in the context of climate change, which is a global and complex phenomenon. This approach is reflected in international instruments such as the Aarhus Convention.

24. The Court emphasised that if Contracting States fail to address the adverse effects of climate change, the Convention rights of present and future individuals within their jurisdiction may be seriously and irreversibly affected. For that reason, the Court held that it is appropriate to make allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf. (See §§ 489, 490 and 499.)

25. In the light of this, the Court held that where the action is brought by an association which fulfils certain requirements of, inter alia, representativeness and suitability, the higher threshold (see paragraphs 21 and 22) for a violation of Article 8 does not apply (see, for example, §§ 502, 519 and 520).

26. For such an association to have standing, the association must firstly be lawfully established in the jurisdiction concerned or have standing to act there. It must also be able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the State concerned. It is irrelevant whether the dedicated purpose of the association is limited to the protection of human rights against violations linked to climate change or includes such protection. (See § 520 with reference to § 502.)

27. In addition, the association shall be able to demonstrate that it is genuinely qualified and representative to act on behalf of members or other

affected individuals within the Contracting State who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention. Regard may also be given to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance. Finally, whether on the whole, in the particular circumstances of the case, the granting of such standing is in the interests of the proper administration of justice is to be considered. (See § 520 with reference to § 502.)

28. The association does not need to show that its members or those on whose behalf the case has been brought would themselves have met the higher threshold for an action by individuals in the climate-change context. (See § 502.)

States' margin of appreciation

29. Thus, while Contracting States may be obliged under Article 8 to take measures to protect individuals from the serious adverse effects of climate change, States are accorded a margin of appreciation as to the concrete measures to be taken. The margin of appreciation accorded to States is narrow when it comes to setting overall objectives, e.g., what limits to temperature increases should be sought. On the other hand, States are accorded a wide margin of judgment as to the choice of means and methods to be used to achieve the objectives. (See § 543.)

The right to access to court in climate-change litigation

Article 6

30. The *Verein KlimaSeniorinnen* judgment also addresses the meaning of Article 6 when an action is brought against the State alleging that the

State's failure to take measures against climate change constitutes a violation of rights under the ECHR. The different forms such climate disputes can take include who has standing and what exactly is claimed.

31. Article 6 means, among other things, that everyone has the right to have their civil rights and obligations determined by a national court. For the Article to be applicable, the dispute must concern a claim to something that is a civil right under domestic law. It is not decisive whether a right is considered a civil right under national law, as the term is interpreted uniformly for all Contracting States. There must be a genuine and serious dispute. The claim does not have to be well-founded; it is sufficient that there are arguable grounds for it. Furthermore, the result of the proceedings must be directly decisive for the right in question. The provision does not apply if there is only a tenuous connection between the outcome of the dispute and a specified right, or if the judgment has only remote consequences for the right. (See the *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)*, 31/08/2024.)

32. Whether the outcome of the court proceedings is directly decisive for the right depends on the type of right invoked and the subject matter of the court proceedings in question. In environmental cases, the ECtHR has held that Article 6 applies when the adverse environmental effects on the applicant are immediate and certain. (See *Verein KlimaSeniorinnen* § 607.)

Climate disputes and the requirement that proceedings be directly decisive for the right

33. In *Verein KlimaSeniorinnen*, the ECtHR emphasised that these general principles for the application of Article 6 also apply in climate-change litigation, but that account must also be taken of the particular circumstances of such litigation (see § 608).

34. To a large extent, the Court adopted the same approach to the application of Article 6 in climate-change litigation as it did to the application of Article 8. For legal actions instituted by associations, the general requirement under Article 6 that the outcome of the court proceedings must be directly decisive for the right in question was relaxed. Where the action is brought by an association fulfilling the criteria set out in connection with Article 8 (see paras. 25–27), it is sufficient that future adverse effects are real and highly probable. A different approach would, according to the Court, unduly limit access to a court for many of the most serious risks related to climate change. (See §§ 614, 622 and 623.)

35. In *Verein KlimaSeniorinnen*, an action by four individuals was also examined. The ECtHR referred to the reasons given by the Court for the applicability of Article 8 in relation to individuals (cf. paras. 21 and 22). Against this background, the Court found that the individuals had not presented evidence to show that the State's failure to act would have created sufficiently imminent and certain effects on their individual rights. Their dispute was therefore considered to have only a tenuous connection with, or remote consequences for, the rights they invoked under domestic law. Therefore, the denial of standing before a national court was not considered to violate Article 6. (See § 624.)

The division of powers between the legislative and judicial branches

36. The interest in maintaining a separation of powers between the legislature and the judiciary is also relevant to the application of Article 6 (cf. paras. 18 and 19). Article 6 does not entail that domestic courts must grant standing to those seeking to invalidate or override a law enacted by the legislature. Nor must Contracting States admit *actio popularis*. Article 6 cannot be relied upon to ensure standing before a court for the purpose of compelling a parliament to enact legislation, except where domestic law

does provide for such access. Furthermore, the interest in maintaining the separation of powers may justify limitations to the right to access to court, if the limitations are proportionate and the essence of the right is not violated. (See *Verein KlimaSeniorinnen*, §§ 594, 609, 627 and 631.) The same applies to the interest in maintaining the separation of powers between the executive and the judiciary (cf., e.g., *Tamazount and Others* v. *France*, no. 17131/19, 4 April 2024).

37. In *Verein KlimaSeniorinnen*, the association had submitted a long list of claims in the action instituted at the domestic level. These largely concerned requests for legislative and regulatory action by the State. In other parts, the association's claims concerned the implementation of measures within the competence of the respective authorities, required to achieve the current reduction target of 20 per cent, and thus for ending, in the opinion of the association, the unlawful omissions. The association also requested a declaratory ruling of unlawfulness of the alleged governmental omission to undertake measures against climate change. (See § 615.)

38. In short, the Court considered that some parts of the association's action concerned issues pertaining to the democratic legislative process and falling outside the scope of Article, but that it also concerned issues pertaining specifically to impugned governmental actions or omissions, alleging adverse effects on the right to life and the protection of physical integrity, which are enshrined in Swiss law (see § 633). The part of the action regarding allegedly inadequate and insufficient action by the authorities to implement the relevant measures for the mitigation of climate change already required under the existing national law, cannot automatically be seen as an *actio popularis* or as involving a political issue with which the courts should not engage with (see § 634).

39. The ECtHR concluded that to the extent that the association's claims fell within the scope of Article 6, its right of access to a court was impaired. In doing so, the Court emphasised that it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed. (See §§ 638 and 639.)

Conclusions from the judgment in *Verein KlimaSeniorinnen*

40. In so far as it is of interest for the review by the Supreme Court, the following conclusions may be drawn from the judgment in *Verein KlimaSeniorinnen*.

41. Article 8 includes a right for individuals to receive certain protection from the State against serious adverse effects of climate change on their life, health, well-being and quality of life. Contracting States may thus be in breach of Article 8 by not taking sufficient measures to mitigate the adverse effects of climate change. However, States have a margin of appreciation as to the measures to be taken and the more specific objectives to be applied.

42. For an individual to have standing to bring an action alleging that they have suffered harm or the risk of harm as a result of alleged failures by the State, the requirements are especially high. The risk of adverse effects of climate change must be significant for the individuals concerned, and their need for individual protection must be acute, for Article 8 to apply. If the action is instead brought by an association, this higher threshold does not apply. However, in order for an association to have standing in a claim for the protection of human rights in this area, the association must meet requirements with regard to, among other things, its representativeness and suitability.

43. It follows from Article 6 that such an association has standing before a domestic court to seek a declaration that the State, by failing to take

adequate measures to combat climate change, is violating civil rights. However, an action seeking the adoption of laws or regulations by the State falls outside the scope of Article 6. In other respects, too, the interest in maintaining the separation between the legislative and executive powers, on the one hand, and the judiciary, on the other, may justify limitations on the nature and form of the actions that may be brought before the courts in order to benefit from the right of access to court.

44. In order for Contracting States to be obliged under Article 6 to grant individuals standing to bring actions before domestic courts concerning the State's failure to take adequate measures against climate change, similar higher standards related to the impact on their individual rights are required as for Article 8.

45. The question is to what extent Swedish law grants standing to an individual or an association to bring a climate-change action against the State in line with the *Verein KlimaSeniorinnen* decision by the ECtHR.

The Instrument of Government and climate-change action

46. The type of climate-change action that has been considered by the ECtHR concerns, at least in part, issues without any direct focus on a particular individual or his or her specific circumstances, but which focus rather on the broader impacts of climate change. Such an action involves a legal challenge to the State's actions or omissions in the field of climate change.

47. This raises the issue of the constitutional boundary between the work of the general courts and the decision-making duties of political bodies. In part, such an action relates to broader social issues and responsibility for the general development of society. A review by the court would focus on how the State – including democratic institutions – performs its tasks in the

environmental field, what measures are to be taken and what objectives are to be achieved. According to the case-law of the ECtHR, this may concern issues that are part of the democratic decision-making process and therefore beyond the scope of the right to access to court (see para. 36). However, within certain narrow limits, the ECtHR has ruled that a climate-change action, even of this more general nature, can be heard in court under the Convention.

48. The Instrument of Government describes the work of the courts in general terms as the ‘administration of justice’ (Chapter 1, Article 8, cf. Chapter 11, Article 4). This expression is not further specified, although it can be inferred indirectly that courts, in their judicial activity, independently and impartially apply legal rules in individual cases, settle legal disputes between individuals and examine deprivation of liberty on the grounds of an offence or suspicion of an offence (see Chapter 2, Article 9 and Chapter 11, Articles 3–5).

49. During the work on the Instrument of Government, it was deemed impossible to draw any hard boundaries around the courts' work or to give a brief description of the activity of the courts, even if the differences between courts and central government administration were borne in mind (see SOU 1972:15, pp. 17, 28 and 191, and Govt. bill 1973:90 p. 233).

50. As far as the general courts are concerned, it is usually stated in the legislative context as a core area that the courts objectively and impartially settle legal disputes between individual interests or between an individual interest and a public interest, adjudicate in criminal cases and in cases involving serious restrictions to or interference in other respects with an individual's personal freedom or integrity, and otherwise examine legal issues (see, e.g., SOU 1972:15 pp. 122 and 191, Govt. bill 1973:30 p. 232, SOU 1994:99 p. 38 et seq. and SOU 2023:12 p. 278).

51. In the assessment of the courts' work at the border of political decision-making, the intention seems to have been to fall back to a large extent on what is traditionally attributed to the area of the courts (cf. “Riksdagens anslagsbeslut” NJA 1988 p. 15). It is important, however, that the content of the term ‘administration of justice’, as a description of the courts' work, not be seen as static and fixed in stone. The introduction of the ECHR and the Convention on the Rights of the Child as Swedish law, as well as accession to the EU, has expanded the role of the courts, granting them greater responsibility for establishing norms, including as related to provisions on balancing interests and objectives. As a result, and by emphasising the role of the courts in the 2011 amendments to the Instrument of Government, the courts have been given a more clearly defined function as guarantors of the fundamental rights of individuals (see Govt. bill 2009/ 10:80 p. 119). This applies in particular to the setting of precedents by the highest courts.

52. It is a duty of the legislature to make adjustments following from various societal shifts, but of the courts as well. A clear line of development in the application of the law in recent decades has concerned the right to access to court in cases involving what, under the ECHR, constitute “civil rights and obligations”, an expression that has come to encompass more than what was previously regarded as the administration of justice (cf. SOU 1994:99, p. 38 et seq.).

53. Such developments in the application of the law must be made with care and discernment, taking into account the nature of the area of law and the constitutional or other legal implications, as well as any practical consequences. However, this development can only go so far before the work of the courts infringes on issues that should be left to the political sphere.

54. The fact that States can be held liable for environmental nuisances under the ECHR in certain circumstances follows from principles developed by the ECtHR over 30 years (cf. paras. 10–13). The ECtHR has – with reference to the particularly serious consequences of climate change for people in general, the need for urgent action and the international climate commitments of the Contracting States – found strong reasons to accept that even a more general climate-change action should also be granted access to court.

55. This suggests that, under certain conditions, a judicial review of the responsibility of the State in the area of climate change may also fall within the framework of what is to be regarded as the administration of justice under the Instrument of Government. However, this must be dependent on the nature of the action and what outcome the review is intended to achieve.

56. Given that a climate-change action activates the constitutional boundary between the work of the courts and the decision-making of political bodies, the Swedish system of legal remedies cannot be permitted to meet the requirements of the ECHR "with a certain margin" in the way that should be sought in other cases (see "Den långsamma tingsrätten" NJA 2012 p. 211 I para. 19). It may be added that the general guidelines laid down by the ECtHR in *Verein KlimaSeniorinnen* may be clarified and specified in the Court's further application of the law.

57. It should also be emphasised that the Instrument of Government does not include any general rule on a right to access to court; instead, general rules are included in the Swedish legal system through, inter alia, Articles 6 and 13 of the ECHR (cf. SOU 2025:2 pp. 43 et seq., 68 et seq. and 311 et seq., and Anders Eka et al., *Regeringsformen – med kommentarer*, 2nd Edition 2018, pp. 118 et seq. and 128 et seq.).

58. From the above, it can be concluded that the Instrument of Government does not preclude any form of a general climate-change action (cf. para. 46). It is therefore necessary to consider the detailed conditions for such an action under Swedish procedural law, taking into account what has been said about the division of responsibilities between the courts and political decision-making, as well as the right to access to court under the ECHR.

Standing before a general court

59. In Swedish procedural law, standing is usually understood to mean the right to be a party to proceedings concerning the matter in question. Therefore, if a party does not have standing, this is an impediment to the admissibility of the case and must lead to the dismissal of the action.

60. The Code of Judicial Procedure includes rules on party status, but not on standing in civil proceedings. For standing in civil cases, it is normally sufficient that the applicant alleges that he or she has a legal claim against the defendant, in order for the applicant and the defendant to constitute parties to the proceedings. The court's position on admissibility or inadmissibility is normally limited to the question whether the applicant claims a right against the defendant. Thus, there are no rules on standing that prevent a party from bringing a claim that his or her Convention rights have been violated due to inadequate measures climate change. (See Chapter 11 and Chapter 42, Section 4 Code of Judicial Procedure, and, e.g., Per Olof Ekelöf et al., Rättegång, Part II, 9th Edition 2015 p. 72 et seq., and Peter Westberg, *Civilrättskipning I*, 3rd Edition 2021, p. 208.)

61. However, the starting point is that a party cannot, without explicit basis in the law, bring an action against another person for the fulfilment of a duty to a third person, or for the determination of what applies between others. There are examples in legislation where a party may have standing

in his own name on behalf of another. For example, there are statutory rules stating that non-profit organisations may have standing with claims relating to the organisation's members (see Chapter 4, Section 5 of the Labour Disputes, Judicial Procedure, Act, 1974:37 and Chapter 6, Section 2 of the Discrimination Act, 2008:567). In very exceptional cases, there may also be scope for granting standing to a party in respect of another's rights without express statutory authorisation (cf. “Talan om annans rätt” NJA 1984 p. 215).

62. In order for a claim for specific performance or a claim for a declaratory judgment to be admissible, the Code of Judicial Procedure also requires that the general conditions laid down in Chapter 13, Sections 1 and 2 respectively be met.

Claim for specific performance

General

63. A claim for specific performance is an action to compel the opposite party to perform an act (see Chapter 13, Section 1 of the Code of Judicial Procedure). The claim may concern a payment obligation or any other obligation. The fundamental distinction between a claim for specific performance and claim for a declaratory judgment is that the former can, as a rule, be enforced by a public authority.

Claim for specific performance of climate-change measures

64. A claim for specific performance obliging the State to set certain targets for its climate-change measures, or to take measures to mitigate climate change, may require the adoption of new or amended legislation. Such an action does not concern the administration of justice and does not fall within the scope of Article 6. It is therefore excluded under Swedish law. (See para. 36 and cf. Govt. bill 2009/10:80 p. 146.)

65. Although the claims are not to be assessed as requiring legislative action, questions about what climate-change objectives a state should adopt and what measures a state should take to mitigate climate change are, as a starting point, within the State's sphere of political assessment. Maintaining this division of responsibilities may be a legitimate reason to limit the right to access to court under Article 6 (see para. 36). Swedish law does not grant the courts any general power to order the State or certain public authorities to adopt certain objectives or to take certain measures to counter the effects of climate change. This means that, as a rule, claims for specific performance of this type are not to be regarded as the administration of justice. In addition, the granting of claims seeking the State to take certain measures to limit climate change would not be enforceable.

66. In conclusion, it is not possible, in the context of a climate-change action of the general nature at issue here, to bring a claim for specific performance requiring the State to adopt objectives or measures to limit the effects of climate change.

Claim for declaratory judgment

General

67. According to Chapter 13, Section 2, first paragraph of the Code of Judicial Procedure, a claim for a declaratory judgement may be admissible if a number of specific conditions are met and if such a claim appears appropriate (cf. e.g. “Miljöprocesserna i USA” NJA 2013 p. 209).

68. Furthermore, according to the third paragraph of the Section, a claim for a declaratory judgement may be brought when this is otherwise laid down in law (cf. NJA 2018 p. 114 regarding the requirement of being laid down in law).

69. The ECHR applies as Swedish law. It follows from Article 13 that anyone who has an arguable claim of being a victim of a violation of his or her Convention rights is entitled to a remedy under national law. This provision reflects the principle that it is primarily the responsibility of the Contracting States to the Convention to implement and enforce the rights set out in the Convention (cf. para. 39). States have a margin of appreciation in terms of how to provide such remedies. However, a fundamental requirement is that Contracting States must grant individuals with arguable claims of having suffered a violation of their Convention rights access to the court, to have the claim examined and have it declared whether this is the case. In so far as civil rights are concerned, it follows from Article 6 that such a review must be carried out by a national court. (See, e.g., Govt. bill 2017/18:7 p. 11 et seq. with references, "Kezban" NJA 2013 p. 842 and the judgment of the ECtHR *Kudła v. Poland* [GC], no. 30210/96, § 147, ECHR 2000-XI.)

70. The provision in Chapter 13, Section 2 third paragraph of the Code of Judicial Procedure may be regarded as leaving scope for permitting a claim for a declaratory judgment where that is required under Article 6.

Claim for declaratory judgement in climate-change litigation

71. The judgment in *Verein KlimaSeniorinnen* shows that Contracting States can violate Article 8 by failing to take adequate measures to counteract the adverse effects of climate change. The Convention applies as Swedish law, and the protection of individuals against violations of, for example, Article 8 constitutes a civil right in Sweden within the meaning of Article 6.

72. *Verein KlimaSeniorinnen* also states that, under Article 6, Contracting States shall, under certain conditions, grant standing before a national court for a claim for a declaratory judgment that the State is

violating civil rights on the ground that the State fails to take adequate measures to counteract climate change. As regards the requirements arising from Article 6 for a climate-change action to be brought before a national court, the following can be emphasised, inter alia.

73. The right to access to court under Article 6 arises if the applicant has arguable grounds for claiming that his or her civil rights have been violated (see para. 31). Thus, Contracting States may require the applicant to have arguable grounds for his claim in order to grant standing before a national court.

74. In order for Article 8 to apply when individuals bring claims that they have suffered harm or a risk of harm as a result of alleged omissions by the State, there is a substantial requirement that the risk of adverse effects of climate change is significant for the individuals concerned and that their need for individual protection is acute. The omission must also have sufficiently imminent and certain effects on their individual rights. (See paras. 21, 22 and 35.) It is only if the applicant has arguable grounds for believing this to be the case that Article 6 is triggered.

75. If the action is instead brought by an association, these high standards do not apply. Instead, in order for an association to be granted standing before a national court in climate-change litigation under Article 6, it must fulfil certain requirements, such as representativeness and suitability. This assessment includes, inter alia, a case-by-case evaluation of whether it is in the interest of the proper administration of justice to grant the association standing to pursue its action. The question of whether the applicant has arguable grounds for the action is thus not tested against the high threshold applied to actions by individuals. Furthermore, it is sufficient that the future adverse effects of climate change are considered real and highly probable. (See paras. 25–27 and 34.)

76. If the claim for a declaratory judgment has as its purpose, not only a declaration that certain rights have been violated, but furthermore a declaration that the State has failed to set certain climate-change objectives or certain measures, the claim may include a requirement to compel the legislature to annul or adopt legislation. The right to make such a claim is not encompassed by Article 6. Even if the claim does not require amending the law, it may conflict with the interest in maintaining the division of responsibilities between courts and other public bodies, which in the application of Article 6 is a permissible reason for limiting the right to access to court. (See paras. 36 and 65.)

77. As noted, Contracting States have a margin of appreciation as to the precise nature of the climate-change objectives and the specific measures to be taken to mitigate the effects of climate change in the application of Article 8 (cf. para. 29). Thus, even if the applicant had arguable grounds to allege that the State violated his or her Convention rights by, for example, failing to take sufficient measures to mitigate the effects of climate change, the applicant does not, as a rule, have a legally protected claim against the State to take a certain specified measure. This is particularly true in the case of generalised measures which are not linked to any specific individual being affected.

78. In the light of the above, it cannot be considered a violation of Article 6 to reject actions seeking a declaration that the State must set certain objectives for its climate-change work or adopt certain specific measures to reduce the general effects of climate change.

79. The only action that would be admissible under the third paragraph of Chapter 13, Section 2 – when required under Article 6 in climate-change litigation (see paras. 73–78) – is thus that it be established that there has been a violation of the rights of individuals under Article 8.

80. If a climate-change action is admissible, the question remains as to what form and degree of omission on the part of the State would be required for such a claim to be successful. A court must consider the constitutional division of responsibilities between courts and political decision-making bodies, including the margin of appreciation that States have, in the substantive review as well. This substantive assessment becomes part of the grounds for judgment, which has no binding effect. For example, if the court were to find that the State had failed to take sufficient measures to achieve a certain climate-change objective, it would still be up to the Riksdag and the Government to, within the framework of the political decision-making process, freely direct further climate-change work. As in other cases where a violation of a Convention right has been established, the Riksdag and the Government must therefore decide independently what measures the violation calls for. A judgment of this kind does not alter the division of responsibilities between the courts and the other branches of government.

The assessment in this case

81. AF's action is based essentially on the infringement by the Swedish State of his rights under the ECHR. However, he has also argued that the Charter of Fundamental Rights of the European Union applies. Yet the Charter of Fundamental Rights of the European Union is addressed to Member States only when they apply Union law. The Charter of Fundamental Rights of the European Union does not apply outside this area, and does not confer jurisdiction on the Court of Justice. (See Article 51(1) of the Charter, Article 267 TFEU and, e.g., European Court of Justice *Åkerberg Fransson*, C-617/10, EU:C:2013:105 paras. 17–22.)

82. Although AF has made certain references to general provisions of the Treaty on European Union – regarding the Union promoting a high

level of environmental protection and on the division of competences between the Union and the Member States in the field of the environment – no question of the application of EU law arises in the examination of the question referred to the Supreme Court.

83. AF has brought an individual class action against the State. The action, if admitted, will also include those class members who have notified the Court that they wish to participate. This is not an action brought by an association on behalf of its members, but by individuals acting on their own behalf.

84. Nor can an individual class action, as AF has argued, be equated with such an action by an association that fulfils the requirements of, inter alia, representativeness and suitability set by the ECtHR (see paras. 25–27). In such a class action, the court must determine whether the applicant and each of the class members has suffered a violation, as in an action brought by an individual. The question whether, and, if so, under what conditions, AF's action would be admissible if it constituted an association action is therefore not raised in this case.

85. AF and the class members brought, in the first place, a claim for a declaratory judgment. To be declared is, inter alia, that the State has failed to take immediate action on a number of specifically enumerated measures to achieve certain specified objectives in relation to climate change, and that this has constituted an offence. Taking into account the interest in maintaining the division of responsibilities between courts and other public bodies as well as the State's margin of appreciation in these matters, such an action need not be admitted in order for Sweden to comply with Article 6 (see paras. 76 and 77).

86. Furthermore, it can be concluded that AF and the members of the class have not invoked circumstances that indicate that the risk of adverse

effects of climate change is particularly serious for them, or that their need for individual protection is urgent. They have thus not shown arguable grounds for their action or that the State's omission has had sufficiently imminent and certain effects on their individual rights (see paras. 21, 22 and – regarding Article 6 review – para. 35).

87. AF's claim for a declaratory judgment is therefore not admissible.

88. In the alternative, AF brought an action for an order requiring the State to take certain general measures to limit the effects of climate change. In accordance with the above, such an action is not admissible (see paras. 64–66).

Conclusion

89. In the light of the foregoing, the question in the application for leave to appeal must be answered in such a way that AF's action is inadmissible.

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Justices of the Supreme Court Gudmund Toijer, Dag Mattsson (dissenting), Jonas Malmberg (reporting Justice), Christine Lager and Anders Perklev. Judge referee: Josefin Odelid

DISSENTING OPINION

Justice Dag Mattsson dissents and states the following.

The type of climate-change action at issue in this case concerns something that is not directly focussed on a particular individual and his or her specific circumstances, but rather on the wider repercussions of a changing climate. The purpose of such an action is to obtain a judicial review of the actions or omissions of the State, in this case the Riksdag and the Government, in the area of climate change. The fundamental question raised by the case is whether such a climate-change action has as its purpose the administration of justice and is thus, according to the Instrument of Government, the work of the courts.

In line with the Office of the Chancellor of Justice's position, strong constitutional objections can be raised to any potential judicial review of the climate objectives set and measures planned, in any case created by developed case law. This applies to both the claim for specific performance as well as the claim for a declaratory judgment. What is important is the form of the claim and the alleged omissions on the part of the State, not who is the applicant.

There is scientific evidence that human-induced climate change poses a threat to the planet. How best to counteract this is subject to political debate, not least regarding the extent to which other important interests in society should be taken into account at the same time. Public and individual resources are limited, and trade-offs must be made between competing demands, both between the environment and other areas where action is needed and between different sectors within the environment. This mainly concerns the existence and the extent of any emission targets set in relation

to climate change. At its core, this involves prioritisation and determining the best allocation of available resources in the long run – in other words, how Sweden is to be governed in general going forward.

The Swedish overall emissions targets are set by the Riksdag, following a proposal from the Government. According to the emissions target set by the Riksdag, Sweden should have net-zero atmospheric greenhouse gas emissions by 2045, and after that achieve negative emissions. The Government has adopted its climate-change policy during the current parliamentary term in order to achieve the Swedish and international climate targets and the EU's climate commitments, with decided and planned measures to ensure that net emissions pass zero in 2045 and are negative thereafter (see Communication 2023/24:59).

In the case of *Verein KlimaSeniorinnen*, where several of the ground-breaking statements pertain to Article 34 and the possibility for an association to bring a complaint directly to the ECtHR, the Court held that Article 8 includes the right to effective protection against the serious adverse effects of climate change on life, health, well-being and quality of life. As Switzerland was found in this case to have failed to adopt appropriate legislative and other measures in time, in particular by not adopting a carbon budget and acceptable emission limits, Switzerland had violated the right to respect for private and family life. Since the Swiss courts (the Federal Supreme Administrative Court) failed to give convincing reasons why the action of the complainants' organisation had not been sufficiently examined on the merits, there had also been a violation of the right to a fair trial under Article 6.

The ECtHR emphasised that, given the complexity and nature of the issues, it could not, however, determine the detailed environmental measures that

Switzerland has to take to comply with the judgment. It was therefore left to the Committee of Ministers of the Council of Europe to decide what action is necessary in response to the judgment.

The summary conclusions that can be drawn from *Verein KlimaSeniorinnen* are set out in paragraphs 41–44 of the Supreme Court's decision.

In substance, *Verein KlimaSeniorinnen* represents a significant departure from the previous case law of the ECtHR in that it will no longer be required that there is a serious and acute environmental nuisance with an actual impact on an individual when it is an association of a certain specified type that appeals to the ECtHR regarding climate change, but rather a “lower threshold” regarding impact will be applied – harm need not be “imminent” in this case. In particular, the clear identification of deficiencies in the general management of Switzerland (statutory omissions, the State’s climate objects and budget) must be seen as a significant novelty.

The ECtHR bases its assessment regarding the violation of Article 8 on a detailed review of whether the Contracting State's efforts and emission targets are sufficient to combat climate change. This sufficiency test covers both what is acceptable to prevent already-incurred negative climate impacts and what is required to limit climate change for the future. The test is forward-looking, referring to the interest in protecting future generations and individuals. The idea is that the judgment will bind the Contracting State in its future considerations of the necessary climate objectives and measures; fair compensation under Article 41 can in this case only be achieved by the State correcting its climate objectives; damages will hardly help (cf. also Article 46.1).

Furthermore, the margin of appreciation that a Contracting State has in the fulfilment of its Convention obligations is found to be narrow, when it comes to the overall climate objectives, such as the limits to temperature increases to be pursued. The review of the Contracting State's climate objectives includes not only an examination of whether that State's own national and international climate commitments are met, but also whether these commitments are appropriate and otherwise sufficient in the view of the ECtHR.

The significance of *Verein KlimaSeniorinnen* for international law and intergovernmental affairs extends to Sweden as well. Contracting States have the primary responsibility for ensuring compliance with the Convention; the international control system is subsidiary to national responsibility. As a member of the Council of Europe and a Contracting State to the Convention, Sweden must respect the judgment, even though it is not formally directed at Sweden, and consider whether any measures need to be taken as a result in the area of climate change or otherwise. The Government is primarily responsible for monitoring Sweden's international law obligations under the Convention.

In addition, the ECHR – while constituting a commitment under international law – also has the status of Swedish law, which does not follow from the Convention but is based on a sovereign decision of the Riksdag. The prevailing view, which is also given form in the Instrument of Government, is that Swedish law is based on a dualist approach to international agreements, and that such incorporation is necessary in order for the provisions of a Convention to be invoked in court.

In a case concerning the question of whether the Swedish State has violated an individual's rights, it is therefore primarily the status of the ECHR as Swedish law that is relevant (on the dual significance of the Convention,

see “De kompensatoriska rättsmedlen I” NJA 2012 p. 1038 paras. 13–16 and “Juniavgörandet” NJA 2013 p. 502 paras. 51–55). It is then for the Court to make its own assessment of the meaning of the Convention and what Swedish legal norm included therein which is applicable in the case.

In principle, the ECHR is to be interpreted and applied in the same way as other laws, i.e. as if its articles were law (“The ECHR shall be applied as law in Sweden...”). Although many of the articles are vague, sufficiently clear legal rules can still be deduced from the Convention, in particular with the help of precedent from the ECtHR, and can be used as a basis for the administration of justice by the courts. One of the key reasons for incorporating the Convention into Swedish law was to create greater legal equality between European states in the area of human rights and fundamental freedoms and to emphasise the community of values that exists. To the extent that the ECtHR has clarified how a particular Convention issue is to be assessed, a Swedish court must be loyal to that interpretation. An excessively divergent application of the Convention in the various States bound thereby does not serve the legal equality sought through incorporation, and rather risks leading to a lack of predictability.

This application of the ECHR as Swedish law must also be made in the light of Swedish law in general. The Convention cannot have sufficient impact if it is not adapted in legal terms on the national level. In addition to the margin of appreciation in factual terms provided for in the Convention, there is also scope for the applying court to implement the Convention rights in the Swedish context, based on the legal and practical circumstances of Sweden, so that the purpose of the Convention is appropriately achieved here; the Convention is a Swedish law and must be applied as such (cf. Govt. bill 2017/18: 7 p. 21 et seq.). When the Convention is to be translated into a corresponding Swedish norm at the

level of law, this must therefore be done in such a way that the rule is adapted to and can function within the Swedish legal order. Above all, of course, it must be compatible with the fundamental principles of the constitution, with the role of the courts and the conformity to the law of the exercise of public power, but also with other law, not least that found in related areas of law, as well accepted general legal principles. Any conflicts with other laws may be dealt with according to the usual principles of interpretation, taking into account the specific purpose and nature of the Convention.

In applying it, it must be borne in mind that a judgment of the ECtHR is made in an international context and is based on the legal and factual situation in the respondent Contracting State and the pleas in law and arguments presented in the proceedings before the Council of Europe. The ECtHR issues a large number of judgments on an ongoing basis, not all of which can be considered precedent, nor can all possible issues be addressed there. Of particular importance is whether the judgment in question has been decided by the Grand Chamber of the ECtHR and whether it contains a clearly formulated and practicable legal standard.

In accordance with what is emphasised in the legislative history of the act of incorporation, even after the incorporation of the ECHR into Swedish law, it is still the Riksdag and the Government, and not the courts, that are primarily responsible for ensuring that the Convention is implemented in Swedish law (cf. Govt. bill 1993/94:117 p. 36 and Committee Report 1993/94:KU24 p. 17 et seq.). The starting point for the act is that it is the Riksdag's task to monitor changes to the content of the Convention, through interpretation by the ECtHR or otherwise, and determine how Swedish legislation is impacted; the legislative history emphasises that the courts' interpretation and application of the Convention should therefore be made with caution (cf., e.g., SOU 1993:40

part B p. 126). No normative power has been conferred on the ECtHR, contrary to what can be said to apply in the case of the Court of Justice of the European Union. The Convention is designed and originally conceived as a mere instrument of international law, with the ECtHR as an international monitoring body.

Since the entry into force of the act of incorporation, there have been significant developments in the way the ECHR is viewed and how it might be applied. Wherever possible, achieving the impact of the Convention is now deemed practicable to greater extent through case law based on the Convention than what the legislative history to assume, avoiding already in the application of the law any violation of the Convention by Sweden. However, where a radical intervention in public law is foreseen, there is still reason to exercise restraint in this respect (see "Juniavgörandet" paras. 54 and 55). It may be required that the Riksdag and Government consider such matters, and a court in an individual case. In making this assessment, it is important to consider how clear and relevant the Convention-based legal situation is for Sweden, as well as the legal and practical consequences that such a legal development in court would have.

Perhaps more than many other judgments of the ECtHR, the statements in *Verein KlimaSeniorinnen* are consistently candid and reasoned, often based on reasons of expediency and with reference to international recommendations and legally binding agreements in the area of climate change. The judgment, which was delivered by the Grand Chamber and is therefore of particular importance in terms of precedent, is extremely comprehensive and detailed, but in several parts, it is somewhat difficult to interpret and complicated and may give the impression of being somewhat contradictory. What is said seems very much designed for its intergovernmental context, and not directly to constitute applicable domestic

law. The ECtHR also referred the details of the judgment to the Committee of Ministers, the Council of Europe's political supervisory body.

Verein KlimaSeniorinnen is a significant decision. The judgment undoubtedly gives the issue of climate change greater weight within the Council of Europe and internationally in general, in both legal and political terms, and the judgment may become a strong push for more far-reaching environmental work. However, the text of the judgment cannot simply be transferred, as is, to specific and applicable domestic legal rules; doing so would not be simple even in its more explicit parts.

The assessment made by the ECtHR under Article 8 with regard to the adequacy of the climate-change objectives relates to the Swiss situation, and cannot be directly used as a basis for assessing the situation in other Contracting States. As a matter of principle, the judgment may be understood to mean that the climate-change commitments that States can be considered to have made under the Paris Agreement, the Aarhus Convention and other international conventions, as well as existing international recommendations, are to be given great weight in a climate assessment under Article 8, even if the ECtHR also makes its own detailed assessment of the risks of climate change and the adequacy of these commitments. A comparison of this kind with other international commitments seems a reasonable method of interpretation, from the point of view of international law. At the same time, it is more difficult to adopt this approach at the domestic level, i.e., for the application of the ECHR as Swedish law. In a court case in Sweden, it would require the implementing legislation to be interpreted and applied not on the basis of that legislation’s Convention origin, nor even on the basis of other commitments of the international parent organisation, but rather based on commitments under international law entered into by Sweden in wholly different international

contexts, which are hardly closely related to the law being applied and which have not been incorporated into Swedish law. In a dualist system, there would be a risk that the fundamental requirement for an implementing measure for national application is ignored, and the commitments under the international climate conventions would then have a domestic effect not sought by the Riksdag, despite the absence of an otherwise requisite legislative decision.

In addition, not only the ECHR, but also the other international agreements in question, are drafted in general terms and subject to exceptions, limitations and reservations, which could lead to uncertainty regarding the precise content of the rights protected in Swedish law. Indeed, the vast and intricate international climate-change system, by means of reports, joint capacity building and continuous negotiations, seeks to fulfil a fundamental general principle of equitable distribution among all the nations of the world, and it seems almost insurmountable to capture and legally enshrine with the necessary certainty and precision the climate-change objectives actually committed to. What constitutes a fair distribution of the problem across the world can hardly be decided within the framework of a Swedish court case, but rather requires an overall international assessment of a political nature.

It is therefore not possible to speak of a source of law in the traditional sense, apart from the lack of any implementing measure. Ultimately, there would be a risk of ending up with a form of free suitability assessment, as the ECtHR can also be said to do in *Verein KlimaSeniorinnen*. It may be easier to understand the acceptability of this in a Convention procedure before the ECtHR in plenary session, with the Court's 17 members from the various Contracting Sates across Europe, than when applying the ECHR as

Swedish law in a district court, with the competency rules and procedural forms that apply to ordinary civil proceedings.

A related question is how to view the right to access to court under Article 6 for an association of the type identified in *Verein KlimaSeniorinnen*. In the judgment, the right to access to court is clearly linked to climate-change objectives and measures as a civil right "under domestic law". It is uncertain whether that right should apply even when it is based exclusively on this EU-law interpretation of Article 8, rather than on other, ordinary Swedish law. Nor can it be immediately accepted as consistent that the protection of the rights of an individual (or a member in a class action, such as the one at issue in the case) in the event of climate change should be different and inferior to in cases where such an infringement is alleged by an association of the kind in question. The explanation seems to lie in the fact that the ECtHR has permitted the procedural question of access to the Court as an international supervisory body under Article 34 to determine the substantive scope of protection under Article 8 as well, an approach that would seem strange if it also applied to the Convention as Swedish law, where Article 34 can hardly have any significance of its own.

In general, a reading of *Verein KlimaSeniorinnen* raises questions of procedural law and management at national level. One might wonder, for example, what the judgment will mean in terms of *res judicata* from a Swedish perspective. It is not clear that a lawsuit filed by one association about certain deficient societal climate-change objectives necessarily prevents a later lawsuit filed by another organisation about other climate-change objectives for the country – or that the same association should not be able to come back with a new lawsuit, despite losing a first lawsuit.

Although Article 8 has long been applied in the field of environmental law, in *Verein KlimaSeniorinnen* the ECtHR is clearly achieving something

radically new, particularly as regards the possibility of bringing an association action. The Court, based on a legal-political view of the ECHR as a living document, bases its conclusions on a clearly extensive interpretation of the protection of rights and is quite far removed from the text of the Convention and what can be assumed to have been intended when it was once negotiated and adopted. When the Convention is to be applied as law in a specific case before a Swedish court, more stringent requirements of foreseeability and anchoring in the text may be necessary, the legal consequences being then more immediate and sharp than in an assessment in an international context, such as the Council of Europe (where, as stated, the final decision was also left to a political body, such as the Committee of Ministers).

For these and other reasons, it is rather difficult to determine which legal standards can be drawn from the ECHR for national application, and the *Verein KlimaSeniorinnen* is not at all easy to accommodate in terms of legal development. Because the ECtHR is embarking on such a new path in its approach to what a court can do, it is also more difficult than usual to predict whether the Court will continue with further and more precise legal developments, or whether, on the contrary – as has happened in the past – it will take one or another step back.

The foregoing must be given weight when deciding what, in the present case – irrespective of the significance under international law of *Verein KlimaSeniorinnen* – is to be regarded as following from Articles 6 and 8 into Swedish law. A general prudence is necessary when assessing what is to be transformed into national norms through the *Verein KlimaSeniorinnen*.

Here, however, the question at issue does not primarily regard which substantive and procedural Swedish legal norms at the statutory level are to

be derived from the ECHR in the present case, but rather the admissibility of the action which AF seeks to bring before the court. The question to be decided is whether that action – the claims, together with the pleas in law and other arguments – can be heard by the District Court. Although AF's action was brought before the decision in *Verein KlimaSeniorinnen* was delivered, it nevertheless closely follows the reasoning of the ECtHR in that judgment.

The question is whether a climate-change action such as this has as its purpose the administration of justice and is thus, according to the Instrument of Government, the work of the courts. *Verein KlimaSeniorinnen* is of no relevance for the assessment of the meaning of the Instrument of Government.

According to the Instrument of Government, all public power proceeds from the people and is exercised under the law. According to Chapter 1, Article 8 of the Instrument of Government, the courts exist to administer justice. The courts thus relate to the Riksdag, which is the main representative of the people and which makes laws, decides on taxes and determines how the State's resources are to be used, and to the Government, which governs the country. State power, which is generally limited by the requirement of conformity to the law, is divided into separate functions assigned to the Riksdag, the Government and the courts. The work of the courts, the administration of justice, must be carried out within the framework of rules laid down in the constitution.

The Instrument of Government does not specify what is meant by the administration of justice. It can be inferred indirectly that courts, in their judicial activity, independently and impartially apply legal rules in specific cases, settle legal disputes between individuals and examine deprivation of liberty on the grounds of an offence or suspicion of an offence (see Chapter

2, Section 9 and Chapter 11, Sections 3-5). During the work on the Instrument of Government, it was deemed impossible to draw any hard boundaries around the courts' work or to give a brief description of the activity of the courts (see SOU 1972:15, pp. 17, 28 and 191, and Govt. bill 1973:90 p. 233).

As far as the general courts are concerned, it is usually stated in the legislative context as a core area that the courts objectively and impartially settle legal disputes between individual interests or between an individual interest and a public interest, adjudicate in criminal cases and in cases involving serious restrictions to or interference in other respects with an individual's personal freedom or integrity, and otherwise examine legal issues (see, e.g., SOU 1972:15 pp. 122 and 191, Govt. bill 1973:30 p. 232, SOU 1994:99 p. 38 et seq. and SOU 2023:12 p. 278). In the assessment of the courts' work at the border of political decision-making, the intention seems to have been to fall back to a large extent on what is traditionally attributed to the area of the courts (cf. “Riksdagens anslagsbeslut” NJA 1988 p. 15). At the same time, societal developments have led to an increasingly expanded role for the courts over time, with more norm-setting being left to case law, including in the context of legislation on balancing interests. The courts have also been given a more clearly defined role as guarantor of the individual's fundamental rights through the 2011 amendments to the Instrument of Government.

To the extent that a task is considered to be part of the administration of justice, the authority of the Riksdag or the Government in this area is limited. According to Chapter 11, Article 4 of the Instrument of Government, the Riksdag may not do the work of administering justice to a greater extent than what follows from the constitution or the Riksdag Act. The Riksdag may not assume what is deemed the work of administering justice, nor may it confer such tasks on itself by means of legislation. Also

relevant in this context is Chapter 11, Article 3, which prohibits the Riksdag and the Government from deciding how a court is to apply a rule of law in a particular case.

The role of the courts in the constitutional system is thus to judge independently – to administer justice in a given case – in accordance with the constitution, the law and other applicable legal rules, thereby upholding the prevailing legal order. The administration of justice in conformity to the law is a necessary condition for individual freedom, and it is only the court's conformity to the law that can grant the individual the possibility of control and democratic influence over developments. The precise meaning of the administration of justice is historically conditioned and evolves over time, but must retain its essential content and maintain a firm boundary with the fundamental legal value of democracy as enshrined in the first article of the Instrument of Government.

In this case, two alternative claims are made, referring in general terms, in addition to Article 8, to Article 2 (right to life), Article 3 (prohibition of inhuman and degrading treatment) and Article 14 (prohibition of discrimination) of the ECHR, and to Article 1 (protection of property) of Protocol No. 1. Both claims – the claim for a declaratory judgment and the claim for specific performance – are formulated in such a way that the action seeks a finding by the District Court that the State must achieve certain specified climate objectives and take certain described measures to limit climate change in order not to conflict with the Convention and violate AF's rights. The dangers that it is argued cannot be avoided if this is not done are those that risk affecting society at large: forest fire, drought, flooding and damage to water and energy systems, increased spread of disease, increased mental illness and increased mortality.

In greater detail, what AF seeks to bring before the court under the claims is a series of alleged omissions on the part of the Riksdag and the Government with regard to objectives established for climate-change work, including that State authorities first and foremost fail to implement Sweden's continuous, fair and technically and economically feasible share of the global measures in this area, that the Government fails to take sufficient and adequate measures to reduce greenhouse gas emissions by at least 9.4 or at least 6.5 million tonnes of carbon-dioxide equivalent per year and to continue to ensure safe concentrations of greenhouse gases in the atmosphere after 2030, and that, in any event, starting in 2019 and ending in 2030, the Government fails to reduce national emissions by at least 3.1 or at least 2.2 million tonnes of carbon-dioxide equivalent per year and to continue to ensure safe concentrations of greenhouse gases in the atmosphere after 2030. In addition to several other shortcomings in the climate-change work that AF seeks to have decided by the court, there are also issues relating to the manner of the Government’s treatment of the matter, such as the acquisition of designated documentation.

One key criticism underpinning the action is that emissions targets and implemented and planned climate-change measures are incorrectly determined and insufficient, that they do not fulfil Sweden's international climate-change commitments and fair share. The main goal is to set more ambitious objectives for future Swedish work on climate change and more effective fulfilment of the objectives, thus avoiding a breach of the Convention. AF has explained that the specific performance of the climate-change measures is mainly a political issue and that the Swedish state should be able to steer this. However, in his view, the State's room for manoeuvre in climate-change work only applies within the framework set by the ECHR, interpreted in the light of national law and the Paris Agreement and other international law, and by scientific knowledge

regarding the impact of climate change on humans. As shown, the action closely follows the approach of the ECtHR.

It can be concluded that a judgment in accordance with AF's claim would in reality bind parliaments and governments to take the measures sought and work towards the stated climate-change objectives – although it is difficult to understand how enforcement could be achieved other than through political means. And, on the contrary, a judgment rejecting his action would send a legal and authoritative message that this is not necessary to protect the life, health and property (at least, not pursuant to the ECHR). Judicial review could thus impose constraints on the future public governance of Sweden, in particular if such proceedings were to result in a judgment in favour of the action. In accordance with the Court's statement, this interest, the mitigation of climate change to the extent authorised by the Court, would have to be prioritised over other public interests. It can be assumed that this is the effect also sought by AF.

Here, the claim involves inadequate measures on environmental protection. Similar claims regarding the obligation of the State to remedy inadequate policies and societal objectives, allegedly in violation of various ECHR rights, could well be constructed for other collective interests, e.g., in relation to allegedly inadequate criminal policy, family policy, energy policy or economic policy. Admittedly, the legal argumentation might then appear flimsier than it is in the present case, but the possibility of granting an immediate judgment on the grounds that a particular claim is manifestly baseless is considered to be limited where violations of the ECHR are alleged.

In this case, the closest other legislation is the 2017 Climate Act. According to Chapter 1, Section 2, third paragraph of the Instrument of Government, the public institutions shall promote sustainable development leading to a

good environment for present and future generations. In accordance with the constitution, which can be considered to include a climate aspect, the Riksdag has decided, with the Climate Act, that each Government shall promote the reduction of greenhouse gas emissions in the manner prescribed by law.

The purpose of the Climate Act is to lay the foundations for the Government's climate-change policy and to outline what such policy should aim to achieve and how it should be carried out. Environmental work must be based on the long-term, time-bound emissions targets set by the Riksdag. It is up to the Government to decide how the Riksdag's emissions targets are to be achieved, but certain instructions are given in the Act; a climate-change report must also be submitted to the Riksdag each year, in addition to a climate-change policy framework after each parliamentary election. This work, which is based on Sweden's commitments under the UN Climate Convention and the Paris Agreement, is to be conducted in a way that allows climate policy and budgetary policy objectives to interact.

The legislative history states that the Government's responsibility under the Climate Act is in itself legally binding. However, this is expressively stated to exclusively mean review by the Riksdag's power of scrutiny, i.e., the Committee on the Constitution's review of the ministers' exercise of their duties and the chamber's ability to pass a motion of censure against a minister (see Govt. bill 2016/ 17:146 p. 45). It does not provide for any sanctions or legal consequences for the Government's failure to fulfil its obligations under the Act. The idea is clearly not that the Government's obligations in the area of climate change should be able to be invoked by an individual against the State (cf. also the Council on Legislation in Govt. bill p. 68 et seq; on the constitutional statute, see Govt. bill 2001/ 02:72 pp. 15 et seq. and 23 et seq.). The same applies to the rules adopted in the EU on

reducing the Union's and Sweden's greenhouse gas emissions. The Climate Act provides even less of a possibility for individuals to legally challenge the emissions targets set by the Riksdag.

As drafted, however, the climate-change action seeks precisely for a court, at the request of an individual, to review the environmental work of the Riksdag and the Government, in practice deciding – either directly, by means of a claim for specific performance, or indirectly, by means of a claim for a declaratory judgment – that parliaments and governments must adopt certain decisions on emissions targets, regulations, government activities and the use of State resources to reduce climate change in order to thus avoid violations of the ECHR.

To find in favour of any of these claims (or, for that matter, against them) would not settle a dispute that has already arisen, but would be forward-looking and have consequences that extend far into the future and far beyond the parties in the case. Based on a review of the efforts made by the Riksdag and the Government and the climate-change objectives set, the court would provide general legal instructions for the future development of society with new and court-approved Swedish objectives for climate-change work. This would immediately affect not only the AF and the class members, but also everyone else residing in Sweden. The matter is of importance to the whole of Swedish society, and, it might be argued, should not readily be left up to a few judges with legal training to decide based on a civil case, with the substantive and procedural limitations that this entails – nor does it help if, given the consequences, the case could be deemed conditionally binding. Nor can the intention of the action be deemed the application of any sufficiently clear and workable substantive rule of Swedish law (as can be seen, such a rule can hardly be inferred from the articles of the ECHR, even with *Verein KlimaSeniorinnen*), but rather a

legally independent review by a court of the general positions adopted by the Riksdag and the Government for the country, after their election by the citizenry.

It is of course particularly clear with the claim for specific performance that the action does not have as its purpose the administration of justice and is thus not the work of the court. Under the Instrument of Government, a court cannot oblige the State, in this case the Riksdag and the Government, to set emission targets, legislate or take other general social measures to limit the future effects of climate change in the manner in question.

However, the same considerations also apply to the functionally equivalent claim for a declaratory judgment.

This claim seeks the declaration of a violation of AF's rights under the ECHR because the Riksdag and the Government are failing to take climate-change measures and work towards the future objectives as described therein. In reality, such a declaratory judgement would mean that no prioritisation or general management of Sweden other than what is sought in the claim could be achieved, since this would then infringe his rights as declared by the Court. Of course, future parliaments could still disregard the declaratory judgment and set other, less ambitious objectives for climate work. The prohibition against the Riksdag's interference in the administration of justice does not prevent the Riksdag – by means of legislation – from influencing an established legal relation, regardless of whether it has been established by judgment or otherwise (cf. SOU 1972:15 p. 100); how far the Government's freedom of action might extend is less clear. But in any case, this would risk leading to problematic tensions between the political powers and the judiciary and risks undermining the legitimacy of the conflicting positions of the different branches of government.

It is, in fact, fundamental objections of this kind that also underlie the constitutional prohibition of abstract judicial review (cf. “Unibet II” NJA 2007 p. 718 and “Videoslots” NJA 2021 p. 147).

A legislative review under Chapter 11, Article 14 of the Instrument of Government takes place retrospectively for a unique case of application, for a specific situation that has arisen, with the application of a superior norm, and only leads to the otherwise applicable provision being set aside in the case in question. Such a review thus does not interfere with the Riksdag's legislative duties (cf. SOU 2008:125 p. 380). However, a claim for a declaratory judgment such as the one in this case requires the court to independently review the decisions of the Riksdag and the Government regarding, among other things, emission targets and regulations – or rather the lack thereof – and assess whether these violate the ECHR, without linking the review to any specific legal relation between AF and the state. Furthermore, the contested positions adopted by the Riksdag and the Government would be scrutinised not on the basis of the results they have achieved in an individual case, but in relation to their long-term future impact on society. This would entail the Court making a general pronouncement regarding which social objectives, regulations and measures should not apply in the future because they are contrary to the ECHR. Such an action is difficult to reconcile with the prohibition of abstract judicial review, at least as it has been understood thus far.

It could be said that the Court's judgment might only declare that a violation of the ECHR had occurred. The constitutionally sensitive review of the climate-change objectives set by the Riksdag and the Government for society and the measures taken and planned is, rather, made in the grounds of the judgment, and it therefore does not have the same binding effect in legal terms; only the judgment establishing a violation would have legal

significance, not the basis of the violation. But such an approach seems too formal in a constitutional context like this and cannot be permitted to settle the matter (and the whole intention of *Verein KlimaSeniorinnen* is to correct policies and change climate-change objectives and measures, so that the Convention is not violated). Nor is the fundamental problem resolved by the fact that the form and degree of the omission on the part of the State required to grant the action becomes a subsequent substantive issue. In making this assessment, the Court must – as in the review of legislation under Chapter 11, Article 14 of the Instrument of Government – take into account that the Riksdag is the people's primary representative, but *Verein KlimaSeniorinnen* nevertheless requires a detailed review of the climate-change objectives that have been established and the margin of appreciation in this respect is, according to the ECtHR, narrow.

Admittedly, a clear line of development in recent decades concerns the right to access to court in cases involving what, under the ECHR, constitute “civil rights and obligations”, an expression that has come to encompass more than what was previously regarded as the administration of justice. However, this has been done mainly through legislation, principally in the administrative field. Developments of this kind in the application of the law must be made with care and discernment, taking into account the nature of the area of law and the constitutional or other legal implications, and recognising practical consequences. There is a limit to what can and should be done through legal developments in court. In this case, this would involve a forward-looking and truly binding review by the courts of the political positions taken by the Riksdag and the Government, a review which cannot be said to be based on any real rule of law – i.e., in conformity to the law – but must ultimately be based on the court's own free considerations of expediency.

It is one thing for the ECHR as Swedish law to be used in case law as an interpretative circumstance or to supplement norms, for it to be applied in such a way that damages for an offence that has occurred are paid without the support of any specific law (e.g., “Finanschefen på ICS” NJA 2005 p. 462), so as to affect the determination of criminal penalties in a given case (e.g. “De kompensatoriska rättsmedlen I") or even so that another piece of legislation is not applied in a given situation (e.g., “Juniavgörandet”, where the necessary legislative amendment was not made despite warnings over a long period of time). Even the State's failure to take acceptable measures in relation to an individual in the case of, for example, a forest fire triggered by climate change, may constitute a breach of the Convention, giving rise to a right to protective measures or damages – the constitutional problem is not that the State per se can be held liable in court in case of risk of harm due to climate change. It is nevertheless a different matter to limit the Riksdag's future room for manoeuvre in case-law by permitting the courts to review and approve or reject future priorities between different collective interests on behalf of the general government of the State, and, in practice, to determine which social goals may or may not be set. Such an application of the ECHR correspondingly excludes citizens from influence.

It is clear that a development in case-law, which provides for the possibility of judicial review of an action of the kind in question, was not foreseen for the Instrument of Government, nor when the ECHR was introduced as Swedish law. Even taking into account the specificity of climate change as a common concern of humanity, there are strong concerns about affecting the balance of State power – among parliament, government and the courts – unless an issue has a broad foundation and is analysed from more angles than can be done here.

It is therefore a major step to now admit an action that seeks a court to review social objectives for the future governance of the country on the basis of a vague article of the Convention. It is uncertain what such a role for the courts might lead to in the long run and in a wider perspective. Courts should be wary of overstepping their assigned constitutional role of administering justice, especially if this means encroaching on what is traditionally the domain of the Riksdag.

This applies even to an action which, in itself, fulfils the guidelines that can be deemed to follow from *Verein KlimaSeniorinnen*.

The conclusion of the foregoing is as follows.

AF's claim for specific performance clearly does not have as its purpose the administration of justice. I therefore agree with the majority regarding the inadmissibility of the claim for specific performance (see also paras. 64–66 of the judgment).

It is also uncertain whether a claim for a declaratory judgment in a climate-change action can be included at all within the framework of what constitutes the administration of justice under the constitution, whether it can in any sense be regarded as the exercise of public power vested in a court under Chapter 1, Article 8 of the Instrument of Government. The uncertainty as to its compatibility with the Instrument of Government is significant enough to constitute a general impediment to applying the current legislation so that a claim for a declaratory judgment in a climate-change action can be admissible. As can be seen, it is irrelevant for this assessment who – whether an individual or an association – seeks standing.

To the extent that it is considered justified on the basis of the ECHR or otherwise – despite the position recently expressed by the Riksdag through

the Climate Act – to create the possibility for a court to hear an action of this kind, these considerations must be made by the Riksdag following all necessary customary preparation in the legislative process, also in view of the detailed conditions, limitations and procedural consequences that need to be investigated in order for the action to function in a factually and legally sound manner in the Swedish legal system.

It may be added that *Verein KlimaSeniorinnen* has been the subject of legal policy discussion and criticism; it has been debated whether this development in European law is desirable or whether the ECtHR has gone too far (see, in Sweden, inter alia, Carl Henrik Ehrenkrona in *Svensk Juristtidning* 2024, p. 745 and Torsten Sandström in *Juridisk Tidskrift* 2024 s. 216). It can nevertheless be considered defensible that an international tribunal, with a given and convention-based monitoring task to ensure that the obligations of the Convention are fulfilled, pronounces that the governance of a particular Contracting State is in breach of the Convention and that better policy objectives are needed to fulfil the requirements of the convention (cf. Articles 19 and 32 of the ECHR). This statement is thus addressed to the Contracting State, and the system is ultimately based on the recognition by each Contracting State of the controlling authority and its willingness to remain bound by the Convention. But the situation is different at national level, within a constitutional democracy.

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