DIFFUSE, FRAGMENTED AND COLLECTIVE INTERESTS IN SWEDISH ENVIRONMENTAL AND CLIMATE CIVIL LITIGATION

Agnes Hellner*

This article examines how Swedish procedural law accommodates collective environmental and climate claims and how European law has influenced access to justice. It analyzes two recent Swedish cases: the PFAS Case *concerning contaminated drinking water and the first* Climate Case*, in which the Swedish state was sued for violating inter alia the European Convention on Human Rights by failing to take adequate measures to prevent climate change. It is argued that, although Swedish law formally provides several avenues for collective litigation, the practical significance of group proceedings have remained limited. Instead, European legal developments have strengthened the role of environmental organizations as representatives of collective environmental and climate interests. The Swedish Supreme Court's handling of the* Climate Case *reflects this trend by favoring organizational standing over individual group actions. The PFAS litigation illustrates that even successful environmental lawsuits face significant procedural obstacles. The paper concludes that, despite expanded opportunities for collective action, uncertainty regarding standing and litigation risks continues to limit effective access to justice, indicating a need for further procedural reform.*

1. INTRODUCTION

Challenges have long been associated with access to justice in the environmental law context. In their seminal comparative procedural law research from 1970's, Cappelletti and Garth identified that the nature of environmental law

* Agnes Hellner is an associate professor of procedural law at Stockholm University. The author thanks Ragnar Söderbergs stiftelse.

claims is such that obstacles to access to justice commonly arise.[1] Consequences of air, soil, or water pollution can be vast. They will typically affect large groups of people in different ways, to a varying degree, and at different points in time. Causal relationships are shaped by temporal gaps and delays. Illness and other negative impacts on human health may occur many years after exposure to pollution, or result from cumulative exposure over a longer time period. As a result, environmental law claims are often collective, diffuse and fragmented.[2]

These characteristics of environmental law claims stand in a complex relationship to civil procedural law, traditionally focused on individual rights and obligations, two-party constellations, and past or present, rather than future or not yet known, events. The emergence of climate change litigation has highlighted the complexity of the relationship between substantive and procedural law in the environmental law context. But climate change litigation has also shown that climate law claims stand out in relation to other environmental law claims.[3] To an even greater extent than environmental law problems generally, climate change has been argued to give rise to 'hot' problems that raise 'structural and foundational' controversies.[4] Perhaps unsurprisingly, therefore, how climate law claims should be dealt with procedurally – in particular, when, if, and how those affected by climate change shall be considered to have a right to court access – has been and remains a hot topic. Moreover, the emergence of climate change litigation sheds new light on long-standing issues of collective action in traditional environmental litigation. While complex contemporary environmental problems make the issue of access to justice for the persons affected seem more pressing than ever, civil procedural law provides no straight-forward path to redress.

1 Mauro Cappelletti & Bryant Garth, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective (1978) 27 Buffalo Law Review 181, 194. Cf Per Henrik Lindblom, The protection of diffuse, fragmented and collective interests in civil litigation in Sweden (1985) 29 Scandinavian Studies in Law 101.

2 Per Henrik Lindblom, The protection of diffuse, fragmented and collective interests in civil litigation in Sweden (1985) 29 Scandinavian Studies in Law 101; SOU 1994:151 del A 154, 157.

3 The focus on differences between climate law and environmental law has been referred to as 'climate exceptionalism'. See eg Christina Eckes, "It's the democracy, stupid!" in defence of *KlimaSeniorinnen* (2025) 25 ERA Forum 451, 458; Chris Hilson, It's All About Climate Change, Stupid! Exploring the Relationship Between Climate Law and Environmental Law (2013) 25:3 Journal of Environmental Law 359, 360–362.

4 Elizabeth Fisher, Environmental Law as "Hot" Law (2013) 25:3 Journal of Environmental Law 347; Elizabeth Fisher, Eloise Scotford & Emily Barritt, The Legally Disruptive Nature of Climate Change (2017) 80 Modern Law Review 173, 178. Another characterization of environmental problems has been to refer to 'wicked problems' – essentially problems defying easy solution. Climate change has been described as a 'super wicked' problem. For a critique of the usefulness of this characterization, see Nick Turnbull & Robert Hoppe, Problematizing 'wickedness': a critique of the wicked problems concept, from philosophy to practice (2019) 38:2 Policy and Society 315.

This article aims to explore current issues of collective action and redress in the context of environmental and climate law, mainly through a Swedish, but also through a European lens. By analysing two cases brought before the courts in Sweden, the article will show how developments in European law have affected the way collective action can be brought before Swedish courts and point to tensions and unclarities that could be problematic from a procedural law perspective. The two cases that will be discussed in the following – one about PFAS contaminated drinking water and one about climate change – were both initiated by a group of individuals. While the *PFAS Case* was brought as separate individual actions joined before the court, the *Climate Case* was brought as an individual group action under the Swedish Group Proceedings Act (2002:599).[5] The latter Act, which entered into force in 2003, establishes a general possibility to bring group actions before the courts in Sweden. In 2003, Sweden was the only European country offering a legal action of this kind.[6] As we will see, however, in particular the implementation of article 9 of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereafter the Aarhus Convention), and corresponding European legislation, in the late 2000's and 2010's, have resulted in a shift in terms of how collective interests are typically litigated in environmental cases (at least when claims relate to collective or general interests, rather than individual rights).[7] While environmental associations now seem to play an increasingly important role in cases about collective and/or supra-individual interests, ie non-individualisable interests, the individual group action might not be possible to rely on in this context to the same extent as one would perhaps have expected.[8] At the same time, however, issues pertaining to access to justice of environmental associations have been and remain contested in Sweden. Also, one notes that Swedish environmental associations so far mainly brought actions in administrative procedural law and environmental permit proceedings, rather than civil procedural actions concerning compensation of damages.

The structure of the article is as follows. Section 2 sets out two important starting points. First, I provide a brief overview of the Swedish procedural law framework for bringing collective action in the environmental law context. Second, I point to the distinction made by the European Court of Human Rights in the *Verein KlimaSeniorinnen* judgment between so-called 'traditional' environmental litigation with individualisable claims, and climate change litigation

5 NJA 2023 s 916 *PFAS*; NJA 2025 s 88 *Action Regarding Climate Change*.

6 Per Henrik Lindblom, Lagen om grupprättegång – bakgrund och framtid (2005) SvJT 129.

7 The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 1998.

8 See further sections 2.1, 3.2 and 4.2. On the term supra-individual interests, see Agnes Hellner, Arguments for Access to Justice. Supra-individual Environmental Claims before Administrative Courts (2019) Doctoral thesis, Uppsala University 29-30.

where claims are more diffuse and general.[9] These starting points provide a foundation for the subsequent case analysis, unfolding in Section 3. Section 4 finally highlights how the different civil procedural 'tracks' which can appear formally available to groups with similar environmental or climate-related claims are in fact either not relied on in practice or not possible to rely on. It is suggested that one of the reasons why the law is difficult to foresee and navigate lies in tensions between developments in the law at European level and Swedish law. Despite legislation in place to address the well-known procedural difficulties associated with bringing collective, diffuse and fragmented claims, obstacles to effective court access remain. To avoid that persons suffering from environmental harm are left without redress, new and alternative legal constructs, both procedural and others, need to be advanced.

2. COLLECTIVE ACTION IN ENVIRONMENTAL LAW

Several procedural 'tracks' have emerged in the last decades, whereby a group of individuals can bring claims before the courts in environmental cases. One procedural issue – that of legal standing in diffuse cases – has remained a subject for controversy, however. Recent case law adds complexity by treating 'traditional' environmental law claims differently from 'general' climate claims.

2.1 The Emergence of Different Procedural 'Tracks' Available to Groups in Swedish Law

The emergence and expansion of the welfare state, in Sweden and elsewhere, marked a shift in legislative policy towards advancing group and collective interests. Large groups of people were granted new legal rights. Collective and public interests in clean air, product safety, and equal treatment, etc., were highlighted, and new areas of law such as social, environmental, and consumer law emerged and expanded.[10] To ensure that the law was respected and enforced, Sweden established public authorities, compliance boards, and ombudsmen. At the outset, private action was not considered a means through which collective and public interests were to be realized in practice. For a long time, courts played a more limited role than administrative authorities in the environmental law context.[11] In the 1990's, however, the role of the courts began to change in

9 Case of Verein KlimaSeniorinnen Schweiz and Others v Switzerland (application no 53600/20), judgment 9 April 2024.

10 See eg Jørn Henrik Petersen, Nordic Model of Welfare States, in Pia Letto-Vanamo et al (eds), Nordic Law in European Context (2019) Springer 32, 35.

11 Cf Per Henrik Lindblom, Miljöprocess, Del I, Iustus, 2001, 28–31.

Sweden, also in the context of environmental law.[12] The Environmental Code (1998:808), adopted in 1999, introduced special Environmental Courts, competent to rule eg in permit and in environmental tort cases. The procedural law applicable in the new courts matched the highly technical character of environmental cases, eg by introducing expert judges. At about the same time, a Public Investigation Report (Statens offentliga utredningar, SOU, a type of preparatory work to the subsequently adopted Group Proceedings Act (2002:599)) argued that rules of civil procedure should be adjusted to make it easier to bring civil law claims relating to collective interests. The introduction of a group action was intended as a means to come to terms with problems related to insufficient enforcement and control in the field of environmental law, among several others fields.[13] It was also intended to make proceedings more efficient.[14] The extensive preparatory works that preceded its adoption set out the problem it sought to address in great detail.[15] They categorized different types of collective interests (a collective interest can, according to the preparatory works, be the interest of a group as a whole, or an individual interest shared by a group of people). The preparatory works furthermore explained that in the environmental law context, the diffuse character of claims may render the assessment of legal standing complicated. The circumstance that large group of people suffer damages, but do not find it worthwhile to bring claims against a polluter because it is too complicated, time-consuming, or expensive, may create an enforcement deficit and insufficient protection of individual rights. In such cases, according to the Public investigation, the group action could expand access to justice to the benefit of legal protection.[16] The legislative proposal was clearly inspired by international and comparative research about access to justice, as well as the development of class actions in the United States and Canada. At the same time, the preparatory works anchored the proposed group proceedings in the Swedish legal and societal context, and the procedure also took a very different shape than eg the American class actions.[17]

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12 Per Henrik Lindblom, Domstolarnas växande samhällsroll och processens förändrade funktioner – floskler eller fakta? (2004) SvJT 1229.

13 In addition to environmental law, the public investigation (*Statens offentliga utredningar*, SOU) thoroughly addressed whether a group action was needed in consumer law and discrimination law. SOU 1994:151.

14 SOU 1994:151, del A, 158.

15 Ibid, del A–C, Grupptalanutredningen.

16 Ibid, del A, 153–155. The function of the procedure may vary, depending on the nature of the claim. It can be economic, reparative, preventive or, in a longer time perspective, contribute to the general realization of substantive law in society (*handlingsdirigering*).

17 The Swedish group proceedings were never expected to be used in a manner similar to its international counterparts. Both the civil procedural rules (in particular, rules on costs) and the legal tradition more generally explain why Swedes have been considered little prone to bring cases before the courts. Cf Per Henrik Lindblom, Grupptalan i Sverige (2008) Norstedts Juridik 70.

The proposal to adopt the Group Proceedings Act gave rise to a great deal of controversy, and lengthy discussions about the possible risks of introducing a group action in Swedish law.[18] At the time, the Swedish legal system was largely non-adversarial. The general understanding that administrative authorities were best positioned to guarantee collective interests prevailed. Because of this, the fact that the Swedish legislature was first in Europe to introduce a general group action can appear surprising.

Under the Group Proceedings Act, a plaintiff can bring an action on behalf of a group of individuals that opt-in to take part in the group proceeding.[19] The judgment will bind the individuals that opt in, but they are not formally parties to the proceedings and they do not stand the costs of the proceedings. The plaintiff can be a natural or legal person, an association, or a public authority.[20] One may note that this makes the Act an instrument for both private and public action. The Group Proceedings Act establishes conditions for admissibility applicable only to group actions. The circumstances upon which the claims are based must be similar or shared among the members of the group. Bringing the case in the form of a group action, instead of an ordinary civil action (where the judgment only binds the parties), must also bring a benefit in one way or another. Furthermore, the group must be appropriately defined and the plaintiff should be an appropriate representative of the group, for the individual group action to be admissible.[21] While the Group Proceedings Act does not itself mention that associations can initiate group proceedings in environmental cases, the Environmental Code states that environmental organisations can bring a group action in environmental tort cases or in cases concerning prohibition of further hazardous activity or protective measures or other precautions.[22]

The applicability of the Group Proceedings Act does not prevent a natural or legal person who wishes to bring claims individually from doing so. Several plaintiffs can also join their claims in one single action under ordinary rules of civil procedure, if the claims are supported on essentially the same grounds.[23] Importantly, however, if claims are joined in this manner, the plaintiffs typically have to reimburse litigation expenses to the winning party, if they lose the case.[24] A case brought individually under ordinary rules of civil procedure can also be transformed into a group proceedings case.[25]

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18 See eg Per Henrik Lindblom, Grupptryck mot grupptalan. Kommentar till ett remissutfall och en uppsats (1996) SvJT 85.
19 Section 1, Group Proceedings Act (2002:599).
20 Sections 4–6, Group Proceedings Act (2002:599).
21 Section 8, Group Proceedings Act (2002:599).
22 Chapter 32, Section 14, Environmental Code (1998:808).
23 Chapter 14, Section 2, Code of Judicial Procedure (1942:740).
24 Chapter 18, Section 1, Code of Judicial Procedure (1942:740).
25 Section 10, Group Proceedings Act (2002:599).

In sum, the Group Proceedings Act and the ordinary rules of civil procedure provide several 'tracks' that can lead to a judgment that binds a group of individuals. In addition to this, an environmental association may also have legal standing (*klagorätt*) to bring claims against decisions and judgments in environmental law cases, if the association fulfils certain criteria relating to its representativeness and statutory objective.[26] This is a result of the implementation into Swedish law of Article 9 of the Aarhus Convention and the corresponding EU secondary law and case law.[27] This possibility for environmental associations to bring claims in environmental cases opened up in Swedish law a few years after the adoption of the Group Proceedings Act.

The Aarhus Convention, and the secondary law adopted by the EU to implement the Convention, importantly contains provisions on access to justice for environmental organisations and individuals in environmental cases. Article 1 of the Convention states that the purpose of the Convention is to contribute to the protection of a right to a healthy environment.[28] In the EU legal order, it has been emphasized that access to justice under the Convention can strengthen the effective application of environmental law through private enforcement.[29] In the 2010's, a number of judgments of the Court of Justice of the EU pushed Sweden (and other EU Member States, in particular those where legal standing of NGO's had been strictly limited) to expand the possibilities of environmental associations to bring claims against administrative action and judgments concerning environmental permits, forestry, species protection, etc.[30] Expanded legal standing (*klagorätt*) enabled associations to use litigation strategically to advance their cause of protecting the natural environment.

When an environmental association relies on the provisions implementing Article 9 of the Aarhus Convention to bring claims against an administrative decision or judgment, the resulting judgment does not bind the individual members of the association in any way. Nevertheless, the environmental association may be considered to act on behalf of its members. This does not mean that it necessarily acts in individual interests held by the members. Crucially, under Article 9 of the Aarhus Convention and the implementing EU secondary

26 See Chapter 16, Section 13, Environmental Code (1998:808).

27 The Aarhus Convention (footnote 7). The Convention entered into force in 2001. Sweden ratified the Convention in 2005. The Aarhus Convention is a mixed agreement under EU law. The EU has adopted secondary legislation to implement large parts of Article 9. There is ample case law from the Court of Justice of the EU on Article 9.

28 See the preambular provisions of the Aarhus Convention as well as Article 1, which also emphasizes that the Convention has as its objective to contribute to the protection of a right to a healthy environment. See further Hellner (footnote 8) at 293.

29 Ibid at 292–301.

30 In its first case concerning the interpretation of Article 9, the Court of Justice of the EU held that Swedish standing criteria for environmental associations were contrary to the implementing directive. C-263/08 Djurgården Lilla Värtans Miljöskyddsförening (2009), EU:C:2009:631.

law, environmental associations have been considered to act so as to protect public, general and/or supra-individual interests, ie interests that cannot easily be broken down into individual interests of natural or legal persons.[31]

2.2 The Nature of the Claims: 'Traditional' Environmental Litigation and 'General' Climate Change Litigation

In the 2024 *Verein KlimaSeniorinnen* case, the European Court of Human Rights found that Switzerland had violated *inter alia* Article 6.1 of the European Convention on Human Rights. The Swiss authorities and courts had dismissed as inadmissible a lawsuit in which a group of elderly women sought, among other things, a declaration that the Swiss state had violated Articles 2 and 8 of the same Convention, by failing to mitigate climate change.[32] *Verein KlimaSeniorinnen* was the first case ever in which the European Court of Human Rights examined on the merits whether a state had violated individual rights under the Convention by failing to take adequate climate action. It was also the first case in which the European Court of Human Rights ruled on whether a state had violated the right to a fair trial by denying a group of individuals and an environmental association access to a judicial review in such a case.

In connection to the examination of whether the right to a fair trial had been restricted in a manner contrary to the Convention, the European Court of Human Rights developed an argument stating that procedural rules need to be applied differently in climate litigation than in environmental law cases of the kind previously addressed in the Court's case law. To enable the adjudication of a claim whose subject matter falls within the scope of Article 6, the European Court of Human Rights held that different requirements may be imposed on procedural rules governing access to judicial review—such as rules regarding legal standing and admissibility of different actions—specifically when the case concerns climate change. In particular, the Court emphasized the relevance of collective action and the role of environmental associations in the context of climate change, the consequences of which is not limited to certain individuals.[33]

What, then, does the European Court of Human Rights consider distinguishes a case concerning climate change from a case concerning (other) environmental law issues? The geographical independence of climate change from any specific, locatable source of emissions, as well as the fact that the emissions—which, by accumulating over time, cause climate change—need not be harmful when they are of a minor scale, are highlighted as such distinctive

31 See eg C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen (2011), EU:C:2011:289, p 46.
32 Verein KlimaSeniorinnen (footnote 9).
33 Ibid at pp 613–614, 622.

features. Closely related to this is the fact that measures to counteract climate change in various ways must be implemented through comprehensive regulatory frameworks, combining different levels and types of governance.[34] The fact that the causes of climate change cannot be easily traced but are intertwined in complex chains of interacting and mutually reinforcing factors is described by the European Court of Human Rights as yet another aspect that distinguishes climate law issues from those of traditional environmental law.[35] In addition to all this, the Court notes that the special nature of climate change as a common global concern also means that everyone is potentially affected by it.

A basic feature of the European Convention is however that it is structured around the protection of individuals against human rights violations – not the protection of the environment as such. In order for the relevant Convention provisions to be applicable, and for a positive obligation to arise for the State, there must be a 'real and imminent risk to life' (Article 2) or an 'actual interference' with the applicant's enjoyment of his or her private or family life or home (Article 8).[36]

From a procedural standpoint, the European Court of Human Rights held that the special features of climate change cannot be allowed to imply that just anyone has the right to bring a climate law action. The European Convention does not, in fact, grant any right to an *actio popularis*, ie, a general right to bring an action, applicable to all. Instead, for Article 6 to be applicable, the applicant must have 'victim status' and the dispute must concern the application of a civil right that is 'directly decisive' for the applicant's right.[37] In assessing these two criteria, the Court noted first that '[the] specific considerations relating to climate change weigh in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected'.[38] With regard to the applicant association, the Court found that '[given] the membership basis and representativeness of the applicant association, as well as the purpose of its establishment, the Court accepts that it represents a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State'[39] and that it 'acted as a means through which the rights of those affected by climate change could be defended and through which they could seek to obtain an adequate corrective action'.[40] For natural persons, the bar for recognising victim status was set higher: they have to be subjected to a high intensity of exposure to the adverse effects of

34 Ibid at pp 416, 418.
35 Ibid at p 417.
36 Ibid at pp 511–512, 514.
37 Ibid at pp 595–596.
38 Ibid at p 498.
39 Ibid at p 523.
40 Ibid at p 621.

climate change, and there has to be a pressing need to ensure the applicant's individual protection.[41]

Because the ruling in *Verein KlimaSeniorinnen* is the first in which the Convention is interpreted in relation to climate change, it is admittedly difficult to assess the significance of the Court's statements. At the same time, the fact that the case is the first of its kind marks an important starting point, and as we will see, the judgment in *Verein KlimaSeniorinnen* has already shaped how the Swedish Supreme Court interprets state obligations under article 6.1 of the Convention in the climate law context.

3. PFAS AND CLIMATE: DEVELOPMENTS REGARDING COLLECTIVE ACTION IN SWEDISH CASE LAW

3.1 The *PFAS Case*

In 2023, the Swedish Supreme Court for the first time ruled in a tort case concerning damages for PFAS-contaminated drinking water.[42] The background to the case was the following.

In 2013, exceptionally high levels of PFAS were identified in the drinking water in Ronneby in Southern Sweden. It soon became clear that the contamination resulted from the use of a PFAS-containing fire-foam by the Swedish military at a nearby military airport. PFAS are a class of thousands of synthetic chemicals that are used throughout society. They all contain carbon-fluorine bonds, which are one of the strongest chemical bonds in organic chemistry. This is a quality that makes them very useful: PFAS can make products resistant to eg water, grease and heat. Because of this, they are widely used in waterproof clothing, food packaging, and cosmetics, amongst other things. But PFAS also resist degradation in nature – they can stay in the ground or in water forever, and accumulate in food and animals.[43] Whether PFAS is harmful to human health is scientifically contested, but even authorised PFAS have been associated with elevated risk for developing cancer, lowered birth weights, decreased functioning of the immune system, etc.[44]

When the inhabitants of Ronneby took blood tests, it turned out that many of them had much elevated levels of PFAS in their blood. Soon, they formed

41 Ibid at pp 487–488.

42 NJA 2023 s 916 *PFAS*.

43 See eg the information about PFAS provided by the Swedish Chemicals Agency, https://www.kemi.se/hallbarhet/amnen-och-material/pfas (visited 8 June 2026). On the regulation of PFAS in Swedish law, see Johanna Chamberlain, Föroreningsskador. Särskilt om PFAS-skadestånd i svensk rätt, Norstedts Juridik, 2025.

44 See eg the information provided by the European Chemicals Agency (ECHA), https://environment.ec.europa.eu/topics/chemicals/pfas-pollution_en (visited 8 June 2026).

an association called the PFAS-association. Around 150 members of the association brought joined individual actions for a declaratory judgment, requesting the district court to declare that the local water company that delivered the contaminated drinking water had an obligation to compensate them for personal injury, consisting in elevated levels of PFAS in their blood.[45]

The association hence did not itself act as a plaintiff in the case. Neither was the case brought as an individual group action. Although the Swedish Group Proceedings Act is designed for situations where a group of similarly affected people bring claims based on similar grounds, and although the lawsuit appears to fulfil the conditions for bringing a group action, the individual plaintiffs instead brought their claims under general rules of civil procedure.[46]

The plaintiffs argued that the PFAS-contaminated drinking water delivered by the defendant was a defective product under the Product Liability Act (1992:18). The latter establishes strict liability for product safety deficiency.[47] The Supreme Court affirmed that drinking water indeed constitutes a product within the meaning of the Product Liability Act, and thus that the defendant can be liable if the water is deficient.[48] The question was then whether the elevated PFAS-levels in the blood of the plaintiffs as such constitute personal injury. At the time of the proceedings, the plaintiffs had not suffered any particular illness as a result of drinking the contaminated water. One may note that the issue of scientific uncertainty with respect eg to the risks associated with a chemical is typical for environmental law, which is often about determining what is an acceptable level of risk in the individual case. Of course, for a group of natural persons, it may be both costly and time-consuming to consult the necessary expertise.

In parallel to the above proceedings, the polluted inhabitants launched a claim before the Chancellor of Justice, arguing that Sweden had breached Article 2 and 8 of the European Convention on Human Rights, and failed to comply with obligations under the EU Drinking Water Directive. The Chancellor of Justice however initially found that the claims were time-barred, and therefore no longer justiciable.[49]

Although the Supreme Court eventually affirmed that PFAS-levels as high as in this case indeed amounted to personal injury, for which the water company

45 NJA 2023 s 916 *PFAS*.

46 See Section 2.1.

47 The Product Liability Act (1992:18) implements Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, pp 29–33.

48 NJA 2018 s 475 *Dricksvattnet*.

49 See Johanna Chamberlain and Jane Reichel, The EU as Trendsetter? Administrating the Full Effect of EU Law The EU as Trendsetter? Administrating the Full Effect of EU Law through National Legal Orders (2026)86 Louisiana Law Review 745; Justitiekanslerns beslut den 29 november 2024, dnr 2024/6643. The claimants thereafter provided additional evidence and the Chancellor of Justice is considering the case anew.

can be liable, several issues remain before the plaintiffs can be compensated.[50] In particular, each plaintiff individually has to prove the extent of the damage as well as the causality. Given the complexity of the case, this requires access to adequate legal and technical expertise. One can foresee that the proceedings risk being both costly, time-consuming, and emotionally exhausting for the plaintiffs, some of which are now sick in cancer.[51] The proceedings so far can therefore not be said to have resulted in effective collective relief for the group of affected individuals.

3.2 The *Climate Case*

In the *Climate Case*, the Swedish state was sued for violating *inter alia* the plaintiff's rights under the European Convention on Human Rights, in particular Articles 2 and 8, by failing to take adequate measures to prevent climate change.[52] Initially, the case was brought as an individual group action under the Group Proceedings Act (2002:599) by a natural person representing a group of young persons aged between 7 and 26 years old. Following the decision by the Supreme Court that the plaintiff did not have legal standing to bring the case, the individuals behind the initial group action have brought a new lawsuit. This time, they bring claims as an association. In both cases, the group of people behind the claims argue that the state has failed to adopt the necessary legislative and administrative measures needed in order for Sweden to live up to European and international climate law obligations. They also submit that the state has failed to ensure the effective implementation and enforcement of the legislation that is in place. As young persons, they argue that they are especially affected by Sweden's failures to act, because those that are young today are going to experience more severely the climate change that will come, and its effects in the future.

The issues assessed in the first *Climate Case* exclusively concerned questions regarding the permissibility and admissibility of a general climate lawsuit of this kind under Swedish constitutional and procedural law. More specifically, the Supreme Court ruled on the compatibility of the filed action for declaratory relief with the rules in Chapter 13, Sections 1 and 2 of the Code of Judicial Procedure (1942:740), rules on legal standing, as well as whether the action concerns the administration of justice, as defined in Swedish constitutional

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50 NJA 2023 s 916. See also Chamberlain (footnote 43) at 88.

51 "Förgiftade" (2023) Documentary produced by Swedish public radio, available at https://www.sverigesradio.se/avsnitt/forgiftade (visited 8 June 2026).

52 NJA 2025 s 88 *Action regarding Climate Change* (*Klimattalan*). An official translation of the Supreme Court decision is available at https://www.domstol.se/en/supreme-court/precedents-archive/case-o-7177-23/ (visited 8 June 2026).

law, and thus is justiciable before the court.[53] The case also raised the question of how Swedish constitutional and procedural law should be interpreted in relation to European law, particularly Articles 1, 6, 8, and 13 of the European Convention on Human Rights. In its decision, the Supreme Court to a significant extent relied on the European Court of Human Rights' ruling in the *Verein KlimaSeniorinnen* case.

A first key aspect of the Supreme Court decision was the permissibility of the action under constitutional law. More precisely, the issue of whether obligations with respect to the phenomenon of climate change, which affects not just a group of people, but rather the entire population, can be litigated at all. The Swedish Constitution stipulates that courts shall administer justice (Chapter 1, Section 8, Instrument of Government (2011:109)). The administration of justice (*rättskipning*) is generally understood to mean the power of the courts to decide and adjudicate, with legal effect, in legal disputes between private individuals or between private individuals and the state. Through the interpretation and application of general legal rules to the specific circumstances of individual cases, the courts are to ensure the protection of individual rights and contribute to the development of the law through the administration of justice.[54] What constitutes the administration of justice is not, however, static. In its *Climate Case* decision, the Supreme Court stated that the content of the administration of justice, and the court's constitutional role, can change over time, as a result both of legislative development and development in case law.[55] Furthermore, a starting point appears to be that procedural rules and the application of the law should more closely define the contours, or boundaries, of the administration of justice.[56] The Supreme Court stressed that, when new types of claims are brought before the courts, the latter must carefully consider constitutional or other legal implications, as well as practical consequences, of expanding court access. When it comes to climate actions that raise questions regarding the constitutional boundary between legislative and judicial powers, the Supreme Court underlined the importance of assessing whether the nature of the action is such that European law requires their admissibility. On the one hand, the Supreme Court recognized, the respect of the requirements of the European Convention of Human Rights must be ensured. But on the other, 'the Swedish system of legal remedies cannot be permitted to meet the requirements "with a certain margin" in the way that should be sought in other cases'.[57] The Instru-

[53] Carl Lebeck, Domstolarnas konstitutionella roll efter *Klimattalan:* några anteckningar (2025)1 Juridisk tidskrift 174.

[54] Mattias Derlén, Johan Lindholm and Markus Naarttijärvi, Konstitutionell rätt (3 ed 2025) 574; Lebeck ibid at 175.

[55] NJA 2025 s 88 pp 51–52; Lebeck (footnote 53) 176.

[56] Cf Lebeck (footnote 53) at 174.

[57] NJA 2025 s 88 at p 56.

ment of Government does not exclude the permissibility of a climate action altogether, the Supreme Court concluded.[58]

A second key aspect of the Supreme Court decision was procedural admissibility, and more specifically the issue of legal standing. A third one was how – that is, in what form – the action should be brought. As already mentioned, the action was brought as an individual group action, in which the plaintiff sought a declaratory judgment. A natural person acted as plaintiff in the case. With reference to the stricter test for legal standing applicable to natural persons put forth by the European Court of Human Rights in *Verein KlimaSeniorinnen*, the Supreme Court however held that the plaintiff did not have legal standing in the case brought before it. Bringing a climate lawsuit in the form of a group action cannot, according to the Supreme Court, be equated with an action brought by an association fulfilling criteria of representativeness and suitability established by the European Court of Human Rights. The less strict standing criteria for legal standing, which according to the European Court of Human Rights shall be applicable to associations in climate cases, could therefore not be extended to apply to collective action in the form of an individual group action under the Group Proceedings Act. Whereas in the individual group action, individuals act on their own behalf and the court must assess whether the plaintiff and each of the members of the group have suffered a violation, an association that brings an action acts on behalf of its members.[59]

The Supreme Court did not further elaborate on the reasons for dismissing as inadmissible the individual group action in the case. This is somewhat regrettable. The Group Proceedings Act was indeed adopted to facilitate collective action in cases about diffuse, fragmented and collective claims. Where, as in the *Climate Case*, the claims concern alleged violations of individual human rights rather than the protection of the environment as such, there are arguably good reasons to think that an individual claimant would be a suitable representative of a group seeking collective redress.

4. CONCLUSIONS AND FURTHER THOUGHTS

Indeed, both the *PFAS Case* and the *Climate Case* stand out in relation to many other cases concerning environmental matters: They address legal issues and problems in the environment previously hardly dealt with by the Swedish courts in civil procedure. Even so, there are reasons to believe that they are indicative of a problem of effective court access. From the point of view of the plaintiff, the procedural law framework appears difficult to foresee and navigate in both cases. Arguably, the *PFAS* and *Climate Cases* first indicate that, in cases

58 Ibid at p 58.
59 Ibid at pp 83–84.

raising legal issues that have not been adjudicated before, it is not clear how the procedural law should be navigated for a case to be admitted and effectively tried by the court. Second, both cases show that it can take considerable time and resources to bring environmental and climate claims before Swedish courts. Third, the cases point to limits to the usefulness in practice of the Swedish Group Proceedings Act. These three points, which will be elaborated on in the following, can all be related to tensions between developments in the law at European level and Swedish procedural law.

4.1 Procedural Differentiation and Plural Procedural Regimes – A Problem of Foreseeability?

Both *Verein KlimaSeniorinnen* and the decision by the Swedish Supreme Court in the *Climate Case* recognize the exceptionality of climate change in relation to other environmental problems. They point out a distinction between claims that can be related to relatively concrete, localised environmental harm – 'traditional environmental litigation' – on the one hand, and, on the other, the more diffuse and fragmented general climate law claims – 'climate change litigation'. The European Court of Human Rights relies on this distinction to create a procedural differentiation between environmental law cases, the claims of which can be described as less diffuse and fragmented (but nevertheless diffuse and fragmented!), and cases about climate change, where the claims are so diffuse that basically anyone could make them. In the latter type of very fragmented climate case, the European Court of Human Rights finds that environmental associations have a special role to play in taking collective action.[60] Accordingly, states must admit claims of this kind brought by environmental associations before the courts, whereas court access can be more restricted for individuals.[61]

While one understands the advantages with channeling the most diffuse climate claims through environmental associations representing individuals[62],

[60] NJA 2025 s 88, p 58.

[61] The same logic, with wider court access for environmental associations making more generally framed environmental claims than for individuals, has emerged under Article 9 of the Aarhus Convention, as interpreted by the Court of Justice of the European Union. See eg Hellner (footnote 8) at 275.

[62] See eg Verein KlimaSeniorinnen (footnote 9) at p 489: '[…] in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. This is especially true in the context of climate change, which is a global and complex phenomenon. It has multiple causes and its adverse effects are not the concern of any one particular individual, or group of individuals, but are rather "a common concern of humankind" […]. Moreover, in this context where intergenerational burden-sharing assumes particular importance […], collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and

the distinction between less diffuse and more diffuse environmental cases can also be argued to be artificial and difficult to uphold. It is questionable if climate exceptionalism indeed constitutes a helpful and solid basis for procedural differentiation. To be sure, many current environmental problems, not just climate change, potentially (and increasingly) affect not just a defined group of individuals, but a much broader circle of persons. PFAS can serve as an example. Because the wide use of PFAS in products, basically every human being has elevated levels of PFAS in their blood. The question of how affected one should be in order to have legal standing to bring claims therefore appears potentially just as complex in a PFAS case as in a case about climate change.[63] While climate change may stand out as exceptional in comparison to traditional environmental problems, it seems that the scope and nature of many environmental problems we are facing today share at least some characteristics with climate change. Like climate change, potential harmful consequences of the persistence and further accumulation of PFAS in soil, water, air, food and animals worldwide, for instance, arguably must be counteracted in various ways and through comprehensive regulatory frameworks, combining different levels and types of governance.[64]

However, the *Verein KlimaSeniorinnen* judgment builds on the development under the Aarhus Convention and the corresponding EU law, whereby the role of environmental associations in the enforcement of environmental obligations has been strengthened. Thereby, it creates a bridge between the European Convention on Human Rights, the Aarhus Convention, and EU law, in terms of how environmental associations are considered key actors when it comes to collective action.[65] At the same time, the creation of differential procedural rules in the climate change context arguably risks adding further complexity to an area of procedural law already marked by fragmentation. Drawing a line between sufficiently concrete and individualisable claims, that can be litigated on an individual basis on the initiative of a natural person, and more general claims that in practice have to be brought by an environmental association in order for the action to be admitted, is not easily done.

Furthermore, one may note that many environmental associations have as their explicit objective to protect the environment as such, rather than the individuals negatively affected by environmental degradation or harm.[66] The European Court of Human Rights indicates, in this regard, that the right of

through which they can seek to influence the relevant decision-making processes' and p 497: 'climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals'.

63 Cf Chamberlain (footnote 43) at 91.
64 Cf Verein KlimaSeniorinnen (footnote 9) at pp 416, 418.
65 Ibid at pp 490–492, 501.
66 Ibid at p 502.

access to justice of environmental associations under the Aarhus Convention, is underpinned by a different objective than the European Convention: While the latter is an instrument for the protection of individual human rights, the Aarhus Convention is designed to enhance public participation in environmental matters.[67] More specifically, the difference between the two instruments arguably lies in the focus on individual rights versus legally protected collective or supra-individual interests.[68] Whereas an environmental association bringing claims under the Aarhus Convention is expected to show that it has as its statutory objective the protection of the environment as such, *Verein KlimaSeniorinnen* instead emphasizes that environmental associations can represent individuals whose human rights have been affected or risk being affected. The two regimes thus target different sets of substantive legal interests. Although in practice these interests often converge, it is not always the case. An association set up to protect supra-individual interests is not necessarily a suitable representative of individuals seeking collective redress for individual rights violations.

This difference in purpose between the Aarhus Convention and the European Convention and its potential consequences for the legal standing of environmental associations in various cases is perhaps best bridged at the level of internal procedural law, either through the adoption of legislation or as national courts implement and apply the requirements of the European Convention, as interpreted by the European Court on Human Rights in *Verein KlimaSeniorinnen*. If, to the contrary, the criteria for legal standing rather are left to be defined at European level, there seems to be a risk for legal fragmentation, through the emergence of differentiated sets of requirements regarding standing under the European Convention and the Aarhus Convention and corresponding EU law respectively. In this regard, one must acknowledge and consider the institutional limits both of the European Court of Human Rights and the Court of Justice of the European Union. If these courts are allowed to become drivers of the development of internal procedural law with regard to collective action in environmental and climate cases, the development will happen *ad hoc* and step-wise in the case law.[69] This can make it difficult for litigants to foresee and navigate the law, and create a problem of legal certainty.

[67] Ibid at p 501.

[68] Elsewhere I have argued that Article 9 of the Aarhus Convention, and in particular its implementation in the EU, is best understood as a mechanism enabling the enforcement of environmental law through litigation, also in cases where no individual rights are at stake. Cf Hellner (footnote 8) 292–301.

[69] Cf Magdalena Tulibacka, Europeanization of Civil Procedures: In Search of a Coherent Approach (2009)46 CMLRev 1533.

4.2 Collective Action in Environmental and Climate Cases – by Whom and in What Form?

In light of the Supreme Court decision in the *Climate Case*, the relevance of the individual group action, whereby a plaintiff, who is a natural or legal person, binds a group of individuals, seems limited in the climate law context in Sweden. At least to the extent that the claims are of general character, as opposed to claims related to concrete, geographically localizable harm. The reason is that a natural person is not deemed to have legal standing in such a case. The Supreme Court does not, however, seem to exclude the permissibility of an organizational group action in the climate law context. Indeed, in line with the judgment of the European Court of Human Rights, the Supreme Court states that standing criteria for environmental associations should be less strict, so that such associations can bring climate lawsuits of more general character.

In traditional environmental cases, on the contrary, where claims relate to a single or specific local source of harm, and the circle of affected individuals has more clear boundaries, the individual group action remains relevant. Still, it was not relied on by the group of polluted inhabitants of Ronneby in the *PFAS Case*.

The two cases highlight how the individual group action, which prior to *Verein KlimaSeniorinnen* and the *Climate Case* at least could appear formally available to groups with similar environmental or climate-related claims, in fact are either not relied on or in practice not possible to rely on. Despite the intentions of the Swedish legislature to address the procedural challenges associated with diffuse, fragmented and collective claims through the adoption of the Group Proceedings Act, the practical relevance of the latter appears circumscribed. The influence of European law has clearly had a more important impact than internal procedural law on the development of the procedural law applicable in environmental and climate matters. As a result, environmental associations have become key actors in environmental and climate litigation, at least on paper. Through widened standing criteria for environmental associations, they were enabled to bring claims against administrative and judicial action within the field of environmental law, broadly understood. Importantly, they were granted legal standing not just in cases about individual rights more narrowly defined, but also in cases relating to environmental protection generally. *Verein KlimaSeniorinnen* and the Swedish *Climate Case* indicate that environmental associations could play an important role also in future Swedish climate change litigation. Whether this indeed will be the case however depends on whether associations acting to protect individual rights will mobilize and take legal action regarding climate change. For the time being, Sweden stands out in a comparative perspective – climate cases have so far been exceptionally few.

Both within the realm of traditional environmental litigation and within climate change litigation, problems of access to justice and collective redress remain. The *PFAS Case* and *Climate Case* illustrate that plaintiffs sometimes bear risks resulting from legal complexity and lack of clarity and foreseeability. Especially in cases raising legal issues that have not been adjudicated before, it is not clear how the procedural law should be navigated for a case to be admitted and effectively tried by the court. As a result, proceedings can be time-consuming, costly, and, one imagines, emotionally exhausting. Alternative and more efficient ways of ensuring that a group of individuals, such as the plaintiffs in the *PFAS Case*, obtain access to justice and redress, need to be developed.[70]

[70] In Sweden, Per Henrik Lindblom is the foremost legal thinker to have addressed issues of judicial protection of collective interests through civil litigation. His comparative procedural law research remains a relevant source of inspiration for thinking further about contemporary procedural law challenges in environmental and climate law. See, in addition to the works referred to above, eg, his discussion of a public action as an alternative to private group actions in Per Henrik Lindblom, Konsumentmål. Om konsumenters processuella rättsskydd, Norstedts, 1985, 95.