

Acta
Universitatis
Danubius



JURIDICA

Climate Change Inaction as Violation of Human Rights: The Swiss Women Climate Case and Impact on Stock Markets

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Abstract: climate litigation has commonly been viewed as complicated by the courts and judges. **Objective:** this objective of this paper is to examine if climate inaction by a state constitutes and infringement on human right. It also aimed to analyse the effects of court decision on climate change litigation on global stock exchange performance. **Priorwork:** the paper inclines on prior literature on climate litigations and on the efficient market hypothesis of information impact on stock prices. **Method:** the paper applied two approaches namely a qualitative conceptual approach with the analysis recent ECHR, and brief quantitative approach using World Stock Market Index data. **Results:** climate change inaction by a state may constitute a violation of human right to life, quality of life and wellbeing. Also, the court decision on climate change litigation affects world index of stock markets significantly and negatively – showing that climate change litigation causes a negative jittery on stock markets. **Implication:** the paper offer implication for university business law departments, finance, economics and accounting academics for curriculum and research. It also offers practical implication for businesses to balancing economic risks inherent in business climate accountability. **Value:** the paper contributes a novel framework on climate inaction as violation of human rights and offers a new model of analysis with a combination of climate litigation and World Index of Stock Exchanges.

Keywords: Climate litigation; climate change inaction; human rights; stock markets; Court decision

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1. Introduction

The past years have witnessed long-held arguments in national courts of nations on whether state failure to implement climate change impact mitigations constitute an infringement on human rights. Many national courts and their judges have thus shown apparent unwillingness to meddle in the complicated nature of climate change laws, conventions, policies, and regulations. This has left many victims that seek climate justice suffer perpetual harm from states and multinational companies whose inaction and unsustainable business operations have left individuals and communities suffer from the negative ripple effect of climate change inaction and unsustainable business operations. Since human activity is one of the main causes of climate change, environmental organizations are pressing governments to address these factors (Preston, 2011, p. 3). Litigation provides an alternative means of promoting mitigation efforts or pursuing compensation for the effects of climate change in the absence of an international treaty addressing the issue (Preston, 2011, p. 3).

On April 9, 2024, the European Court of Human Rights in Strasbourg, France, rendered a decision declaring that the Swiss government had violated the human rights of its people by failing to take necessary action to combat climate change. It is expected that this historic ruling, which favored more than 2,000 Swiss women participating in the case, will have a major influence on future climate-related litigations and have a positive ripple impact toward encouraging other communities to file climate litigation actions against governments that are not doing enough to address climate change (Reuters, 2024, p. 1). The novelty of the court's ruling inclines on its multiplicity of legal, regulatory, and economic impacts, which will emerge in due course. This climate case decision offers respite to many individuals and communities clamouring for climate justice – a justice genre that has remained apparently underexplored with inherent complexities (de Lange, 2024, pp. 1-14). It is thus not surprising that, despite this uniquely momentous and favourable court climate decision, due to procedural issues, the European Court of Human Rights (ECtHR) dismissed two other cases pertaining to climate change, which underscores the complexity of the growing trend of climate litigation. In one of these cases, a former mayor of a French coastal town filed a lawsuit against thirty-two European states, while six young Portuguese people did the same in the other. Conversely, women in Switzerland over 64 asserted that they were at risk of dying during heatwaves due to their government's inaction on climate change. They argued that being older and female made them more vulnerable to the effects of climate change (Reuters, 2024, p. 2).

The growing complexities in climate change litigation and court ruling has prompted scholarly interests from a multidisciplinary slant. In their review research in search of cohesive themes, Setzer and Vanhala (2019, p. 1) were able to coin four climate litigation related themes namely, climate litigation and governance, time scale and climate litigation, science and climate litigation, and human rights and climate litigation. The recent Swiss women climate litigation had its slant on human rights – the right of women to survival amid climate change.

Given therefore the difficulties that have often thwarted swift and favourable climate change justice, and the unique success of the Swiss women climate change litigation, this paper examines governments' inaction on climate change constitutes a violation of human right and the effect of the recent European court decision on global stock market indices.

2. The Problem

The legal and regulatory environment of every economy and the business empires that are hosted within the economies are key factors amongst others, which direct the pace and oscillation of their functions. The novelty of the current Swiss women climate litigation and the attendant ruling by the European Court of Human Rights inclines on its multiplicity of legal, regulatory, and economic impacts, which will emerge in due course. Notwithstanding the futuristic ripples though, there is an on-the-spot significant effect of the climate court ruling on business, namely on the major global stock market indexes. This arises because the efficient market hypothesis opines that stock markets are impacted by every information and/or event within or outside the immediate location (Fakhry, 2016, p. 431; Lee, et. al, 2010, p. 49). Accordingly, both the legally recognised stock market hedgers and/or speculators respond spontaneously to stimuli arising from economically impacting legal decisions such as those of the climate and environmental cases. Not only are countries becoming jittery following European Court's ruling, but businesses are also equally on their toes because the currently decided climate case will certainly pave the way for numerous other climate litigations for states and businesses. The attendant financial and/or economic effect on these entities will ever remain problematic. Hence this novel paper is an on-the-spot evaluation to understand whether the current climate litigation affected the Global Stock Exchange Indexes given the strong linkage between the European Union and other global markets. The result of this analysis provides important insights for stock market participants, stock

exchange operations, corporate managers, and corporate lawyers to assist with current and future decisions on stock market investment decisions and climate regulatory compliance (Erion, 2009, pp. 164-171).

3. Research Objective

Drawing from the aforesaid research problem, and with inclination on the recent European court decision on Swiss Women Climate Litigation, the core objective of this paper is to examine how governments' inaction on climate change constitutes a violation of human right and the effect of the recent European court decision on global stock market indices.

4. The Judiciary, Climate Change and Climate Litigation

The recent ruling by the European Court of Human Rights ushered in new positive slant on the role of the judiciary in instilling climate responsibility, playing a climate reformative role and curbing extreme negative effects of climate change (Colby, et. al, 2020, p. 168; Burgers, 2020, pp. 168-185; Rangaswamy, 2015, p. 142). The ruling resonates with Burger (2020, p. 168), wherein they wondered if judges should make climate change laws, hence by virtue of such ruling which has set a landmark precedence, judges have the capacity to make, interpret and enforce compliance with climate change laws, treaties, and regulations. Scholar argue that judges must make a decision on issues that are brought before their court irrespective of whether it might be interpreted as interference into political matters or not. Hence, according to Burgers (2020, p. 56) after being dubbed as an "explosion" by scholars in 2015, the wave of climate change lawsuits has now become a well-established movement with no signs of slowing down. Over a thousand lawsuits have been filed worldwide regarding liability for the risks associated with climate change. Some academics have argued that judges entering the divisive political arena of climate change jeopardizes the balance of powers ever since the worldwide trend of climate lawsuits began (Burgers, 2020, p. 56). Given that all human endeavours fall under the control of the law through the court of justice, and by implication the judges are equally judged by other judges, some scholars acquiesce that the courts and the judges should step in to play a crucial role in climate law (Colby, et. al, 2020, pp. 168–185).

In their research on the court's role in climate change judgement, Colby, et. al. (2020, pp. 168–185) addressed the question of how the court influences climate change

policy. Through an examination of the arguments put out in the landmark case of *Urgenda v. United Kingdom of the Netherlands*, the researchers contend that human rights protection and promotion should be given top priority in climate change litigation. To guarantee that the state carries out its duty to enforce emission regulations, they therefore support the court having a major role in the formulation of climate change legislation. Rangaswamy, (2015, pp. 142-150) concurs with Colby, et. al. (2020, pp. 168–185), and opines that the judiciary has the capacity to offer clear and compelling direction that offers a possible structure for ensuring compliance with environmental regulations. Additionally, they contend that the court can be of great assistance to the State in putting into practice sensible policies that lessen the chance of harm and alleviate environmental concerns. Proponents argue that the judiciary’s involvement in climate change matters could, in addition to its traditional constitutional responsibilities, positively reshape the state’s current reformative and preventive approaches to environmental issues by increasing awareness among governmental bodies about the urgency of addressing climate change Rangaswamy (2015, pp. 142-150).

5. Climate Inaction as a Violation of Human Rights

Analysis of the European Court of Human Rights Decision in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

In the April 9, 2024, “of the Grand Chamber judgment in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20) the European Court of Human Rights held, by a majority of sixteen votes to one, that there had been - a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights” (ECHR, 2024, p. 1).

The case was a complaint brought out by four women and the Swiss organization Verein KlimaSeniorinnen Schweiz. This society is made up entirely of senior women who are extremely concerned about how climate change may affect their quality of life and health. They are adamant that the Swiss government has not done enough to prevent or mitigate the negative impacts of climate change in accordance with its commitments under the Convention (ECHR, 2024, p. 1).

“The Court found that Article 8 of the Convention encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being, and quality of life” (ECHR, 2024, p. 1).

The ECHR judgement made reference to the EU Convention in their judgement – particularly pointing to the human rights embedded in the article 8, which all members of the convention accented to. By extension thus, the nature of the article 8 convention complies with the character of normative system, normative right and normative law, which therefore must be respected by all parties. Accordingly, all subjects of the normative legal system possess the right to observe the performance of the legal contract (Penner, 2000, p. 1).

Regarding whether the Swiss women association had the right to file climate litigation against the Swiss government, the European Court of Human Rights (ECHR) ruled that the applicant association has the *locus standi* (legal standing) to bring a case against the respondent State about the possible risks associated with climate change. This was carried out on behalf of people who may reasonably claim that they were subjected to specific risks or adverse effects because of climate change, which had an immediate impact on their life, health, and general standard of living, protected under the EU convention (ECHR, 2024, p. 2).

The failure of the state was also pointed out by the court. The ECHR held that the Swiss Confederation have failed to meet its climate change-related commitments under the Convention, according to the Court. The court further found that the establishment of the required domestic regulatory framework was bereft of important provisions, such as the quantification of national greenhouse gas emission constraints by means of a carbon budget or other techniques. Furthermore, Switzerland's prior targets for reducing greenhouse gas emissions were not met. The Court found, based on the evidence presented, that the Swiss authorities did not act promptly or effectively in creating and enforcing relevant legislation and measures in this case, even though it acknowledged the broad discretion that national authorities have in implementing laws and measures (ECHR, 2024, p. 2).

In addition, the Court found that the applicant association's complaint about the appropriate implementation of mitigating measures in accordance with national law was relevant to Article 6 § 1 of the Convention. The Court concluded that the Swiss courts' decision to forgo evaluating the merits of the applicant association's complaints was not sufficiently justified. They disregarded the overwhelming body of scientific data supporting climate change and failed to give the complaints the serious consideration they deserved (ECHR, 2024, p. 2). Accordingly, the ECHR decision on climate litigation provides shows that climate inaction does constitute a violation of human right. Based on the above paragraphs of analysis the following frame emerges in Figure 1.

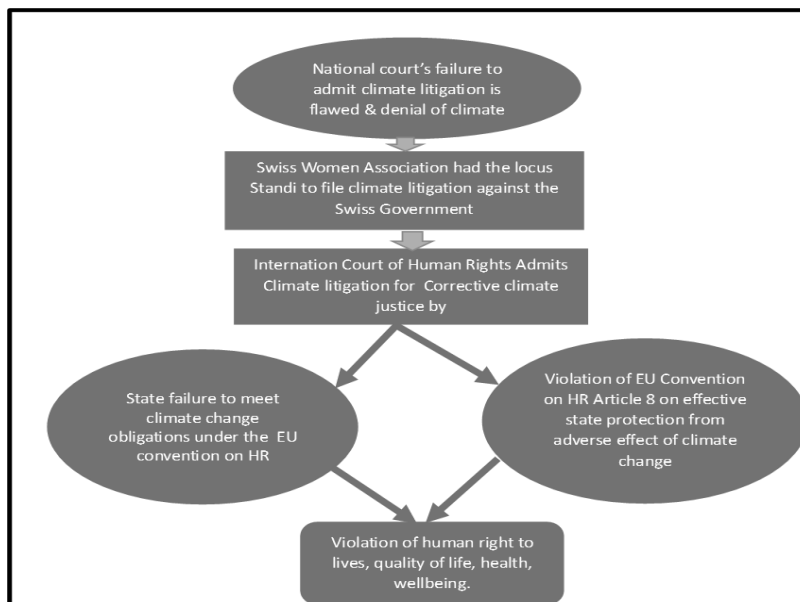


Figure 1. Climate Inaction as Violation of Huma Rights – A Conceptual Framework

Source: Author – Based on the Analysis of the ECHR Climate Litigation Decision

6. Climate Litigation and Stock Market Reaction

Court decisions on climate litigations have been found to have diverse implications on the performance of stock markets. Kolaric (2023, p. 1) investigated how stock values were affected by climate litigation. The results showed that the stock prices of oil and gas corporations in North America and Europe were significantly impacted negatively, whilst companies in other jurisdictions saw very slight gains. These findings highlight the negative effects of more climate-related lawsuits as well as the hazards that climate activism poses to company values. To analysed the consequences of climate change lawsuits, Solana (2020, pp. 344-372) undertook research with a focus on financial institutions. Financial institutions are particularly vulnerable to the risks connected with climate change litigation because they facilitate actions that exacerbate the climate emergency. As prospective defendants, they run the risk of being directly exposed, which could result in fines, costs associated with legal and administrative proceedings, financing, insurance, and reputational harm. Solana (2020, p. 344) further stressed that financial institutions may also be indirectly exposed to litigation that targets their counterparties, especially their clients. If the client's solvency is impacted, this might lead to financial losses and further damage to the institution's reputation. In a study by Fdez-

Galiano, et. al. (2022, p. 1), the researchers used reputational losses as a kind of discipline for environmental wrongdoing to investigate investors' environmental awareness. They examined a 17-year legal dispute involving Boliden-Apirsa, a company connected to environmental misconduct.

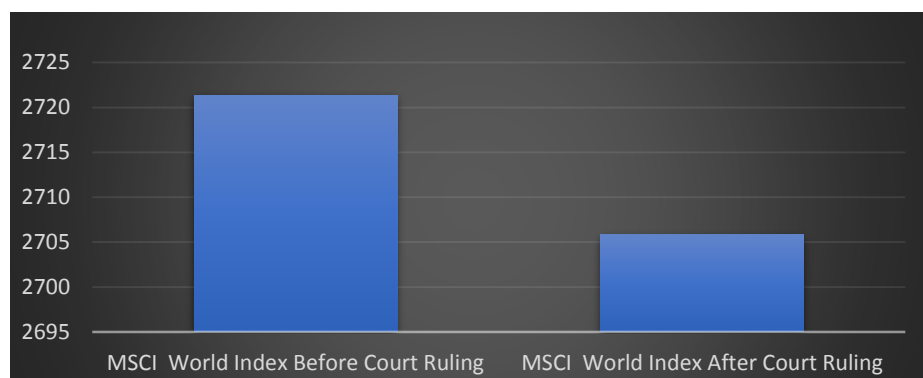
7. Method and Results

This paper applied a mixed approach, firstly with a conceptual approach through the analysis of the recent climate litigation judgement by the European Court of Human Rights, which culminated in a conceptual framework in Figure 1. Furthermore, to analyse the effect of the ECHR decision on global stock markets, the paper used stock exchange data on MSCI World Indices collected from the Fusion Meda (2024) before April 9, 2024, and after April 9, 2024 (a comparative data). The data was analysed using the t-test of difference in mean performance between these two comparative stock performance data.

Results from the analysis in Table 1 and Figure 2 shows that there is a significant difference between the global stock market indexes performance before the 9 April ECHR decision and after the global stock market indexes performance following the 9 April ECHR decision. Overall, the World Index of stock performance decreased significantly with probability value of 0.003 and 0.006 (at one tail and two tail tests). This probability score is far lower than the alpha level of 5% significance level which thus indicates a highly significant and negative effect of the climate litigation on global stock indices. This significant difference shows that global stock exchanges as providers of financial capital are sensitive to court decisions on climate litigations because the implication of such court decisions would have cost ramifications for corporate entities regarding their degree of responsibility with climate change policies. The findings of this paper which used a global data corroborates the previous research finding by Kolaric (2023, p. 1), which used data from two continents, namely North America and Europe.

Table 1. T-test of Mean Difference in Major Global Stock Market Indexes Before and After the Court Ruling on Swiss Women Climate Litigation

	<i>MSCI World Index Before Climate Case Ruling</i>	<i>MSCI World Index After Climate Case Ruling</i>
Mean	2721.38798	2705.798133
Variance	1983991.952	1961501.735
Observations	15	15
Hypothesized Mean Difference	0	
df	14	
t Stat	3.180730831	
P(T<=t) one-tail	0.003335671	
t Critical one-tail	1.761310136	
P(T<=t) two-tail	0.006671342	
t Critical two-tail	2.144786688	

**Figure 2. Bar Graph of Mean MSCI Index Before Climate Case Ruling**

8. Implication

This paper has strong implications for university academics and postgraduate students' researchers in business law, economics, finance, and accounting. This paper has elevated for future academic studies and research the need to consider and include climate litigation and related law issues in business schools. It also has implication for business and corporate law academics and practitioners to give attention to the apparently neglected area of litigation namely climate litigation as the ECHR decision and the effect on global stock exchanges has proven that the court and judges can admit litigations from climate victims either in the national court or in an international court such the ECHR. This paper also shows that the courts and

judges can preside over climate litigation cases. In the same vein the judges are emboldened by this recent ECHR judgement to take on new climate litigations. Since business corporations operate under national and international law environment, corporate executives may draw strategic climate responsibility lessons from this paper to plan their climate investments and stock investments – with a view to balancing the economic risks that lay inherent in business climate accountability.

9. Value (Contribution)

This current study extends previous research on the effects of climate litigation on stock markets by focusing on the most recent and uniquely landmark climate litigation brought by the Swiss women association against the Swiss government. Since the handing down of judgement by the European Court of Human Rights on April 9, no research has assessed the effect of this novel judgement on stock market performance. The value of this paper is further inclined on the usage of data from major global stock markets; hence the paper adds to current research by demonstrating that women's climate litigation against their state has the propensity to affect global stock markets. A new model of study linking the judiciary (climate litigation) and global stock exchange is thus advanced by this paper.

10. Conclusion

This paper aimed to determine if climate inaction by a state constitutes a violation of human rights and if climate change litigation affects the performance of global stock markets. The paper draws instance from the recent ECHR judgement on climate litigation brought by a Swiss woman association against the Swiss government. The paper applied two pronged approaches namely a qualitative conceptual approach, and brief quantitative approach. The conceptual analysis of the ECHR judgement shows that the climate inaction by a state within the EU Climate Change Convention may constitute a violation of human right as decided by the ECHR judge. This landmark court decision untangles a long-held unwillingness by national courts to admit climate cases brought by climate change victims. The decision also offers a light for legal experts to view climate change litigation from a different stance against the commonly held view of climate litigation as complicated.

Furthermore, the findings from a stock market quantitative analysis indicates a significant difference in mean stock performance between the global stock market

indexes performance before the 9 April ECHR court decision and the global stock market indexes performance following the 9 April ECHR decision. The World Index of stock performance decreased negatively and significantly following the climate litigation decision with probability value of 0.003 and 0.006 (at one tail and two tail tests). This significant difference demonstrates that the global stock exchange markets are sensitive to court decisions on climate litigations because court decisions on climate change cases would have cost implications for businesses, as their business capital are funded and traded through the assistance of the stock markets. Hence this paper provides academic and practical significance and contributes a novel value through the development of a unique conceptual framework showing climate inaction as violation of human right. The findings also offer insight for corporate executives for strategic planning of corporate climate change responsibility and accountability.

References

- Burgers, L. (2020). Should judges make climate change law? *Transnational Environmental Law*, Vol. 9(1), pp. 55-75.
- Colby, H.; Ebbersmeyer, A. S.; Heim, L. M. & Røssaak, M. K. (2020). Judging climate change: the role of the judiciary in the fight against climate change. *Oslo Law Review*, Vol. 7(3), pp. 168-185.
- de Lange, D. (2024). What climate litigation reveals about judicial competence. *European Law Journal*, Vol. 29, pp. 312–325.
- Erion, G. (2009). The stock market to the rescue? Carbon disclosure and the future of securities related climate change litigation. *Review of European Community & International Environmental Law*, Vol. 18(2), pp. 164-171.
- Fakhry, B. (2016). A literature review of the efficient market hypothesis. *Turkish Economic Review*, Vol. 3(3), pp. 431-442.
- Fdez-Galiano, I. M.; Feria-Dominguez, J. M. & Gomez-Conde, J. (2022). Stock market reaction to environmental lawsuits: Empirical evidence from the case against Boliden-Apirsa. *Environmental Impact Assessment Review*, Vol. 96.
- Fusion Media (2024) *Investing.com-MSCI World Index*. Retrieved from <https://za.investing.com/indices/msci-world-historical-data>.
- Kolaric, S. (2023). The impact of climate litigation and activism on stock prices: the case of oil and gas majors. *Review of Managerial Science*, pp. 1-32.
- Lee, C. C.; Lee, J. D. & Lee, C. C. (2010). Stock prices and the efficient market hypothesis: Evidence from a panel stationary test with structural breaks. *Japan and the world economy*, Vol. 22(1), pp. 49-58.

- Penner, J. (2000). The Elements of a Normative System. *The Idea of Property in Law*, pp. 7–31.
- Preston, B. J. (2011). Climate change litigation (part 1). *Carbon & Climate Law Review*, Vol. 5(1), pp. 3 -14.
- Rangaswamy, D. (2015). Climate change: Reformatory role of Judiciary. *International Journal of Social and Economic Research*, Vol. 5(3), pp. 142-150.
- Reuters (2024). *Reaction to Swiss women's victory in landmark climate court case*. Retrieved from [https://www.reuters.com/world/reaction-swiss-womens-victory-landmark-climate-court-case-2024-0409/#:~:text=STRASBOURG%2C%20April%209%20\(Reuters\),out%20two%20similar%20cases%2C%20however.](https://www.reuters.com/world/reaction-swiss-womens-victory-landmark-climate-court-case-2024-0409/#:~:text=STRASBOURG%2C%20April%209%20(Reuters),out%20two%20similar%20cases%2C%20however.)
- Setzer, J. & Vanhala, L. C. (2019). Climate change litigation: A review of research on courts and litigants in climate governance. *Wiley Interdisciplinary Reviews: Climate Change*, Vol. 10(3).
- Solana, J. (2020). Climate change litigation as financial risk. *Green Finance*. Vol. 2(4), pp. 344-372.