



# The action regarding climate change brought against the state is inadmissible in court

A group of people have sued the state at Nacka District Court. They want the district court to establish that the state is obliged to take certain measures to counteract climate change. The Supreme Court has now concluded that the case is inadmissible. This is because a court cannot decide that the Riksdag or the Government has to take any particular action. The political bodies decide independently on which specific climate measures Sweden should take. However, the Supreme Court does not rule out that an action regarding climate change that is formulated in another way can be tried in a Swedish court. The European Court of Human Rights has recently ruled that an association that meets certain requirements may have the right to bring an action regarding climate change. The Supreme Court states that such a case could only concern the question of whether the rights of individuals under the Convention have been violated, not what specific measures the state is obliged to take.

## The case in the district court

A person has brought a class action against the state at Nacka District Court. Around 300 people have joined the class action. They have requested that the District Court declare that the state violates their rights under the European Convention on Human Rights. Their position is that the state is not taking sufficient measures to counteract climate change and that the state is not achieving certain specified goals for the climate. They want the Court to establish that the state does not take certain specifically listed measures. In the alternative, they ask the Court to order the state to take certain specified measures to reduce the concentration of greenhouse gases in the atmosphere.

The Nacka District Court has referred to the Supreme Court the question of whether such an action against the state can be considered by a court.

## The case in the Supreme Court

The main question for the Supreme Court is how Swedish law relates to the possibility of bringing an action regarding climate change against the state, especially in light of a judgment from the European Court of Human Rights that was handed down in the spring of 2024.

The Supreme Court's decision consists of several sections. An analysis is made of the meaning of the European Convention on Human Rights. The Supreme Court also reviews the Instrument of Government to assess how the constitutional boundary should be drawn between the tasks of the ordinary courts and the decision-making of the political bodies. The Court then addresses the question of whether an action regarding climate change falls within the framework of the Swedish procedural rules. Finally, the Court assesses the admissibility of the present case.

The European Court of Human Rights stated in its judgment that there is convincing scientific evidence that climate change has already contributed to an increase in morbidity and mortality and that, without action by states, it risks reaching a point where it becomes irreversible and catastrophic. Against this background, the Court concluded that the European Convention on Human Rights, under certain conditions, provides a right to bring an action regarding climate change against the state. But it is a fundamental principle not to allow an *actio popularis*, and climate change affects everyone. Therefore, very high requirements are set for individuals to have the right to bring such an action. Individuals have the right to judicial review only if the state's failure to act has had a sufficiently immediate and certain effect on their individual rights.

If, on the other hand, the action is brought by an association that meets certain requirements for, among other things, representativeness and suitability, these high requirements do not apply. According to the European Court of Human Rights, such an association has the right to bring an action regarding climate change before a national court against a state to examine whether the state violates the human rights of its members by not taking sufficient action against climate change. However, the interest in maintaining the division of responsibilities between the legislature and the executive, on the one hand, and the courts, on the other, may justify restrictions on the right to such an action. This means, among other things, that an action for the state to adopt laws or other regulations does not have to be allowed.

## Findings of the Supreme Court

The Supreme Court notes that such an action regarding climate change on which the European Court of Human Rights has ruled concerns the repercussions of a changed climate in general – not just the effects on certain individuals – and involves a judicial review of the state's actions in the climate area. Such a general action regarding climate change against the state therefore brings to the fore the constitutional

boundary between the tasks of the ordinary courts and the decision-making of the political bodies.

The Instrument of Government sets limits on what the courts can review, but according to the Supreme Court, does not exclude any form of such a general action regarding climate change that the European Court of Human Rights has ruled should be possible.

The action brought before the Nacka District Court is not brought by an association, but by a person who is acting on behalf of individuals. That form of individual collective action cannot be equated with an action brought by an association such as that examined by the European Court of Human Rights in its decision. The action at issue is an action brought by individuals and they have not put forward circumstances which mean that the risk of adverse consequences of climate change is particularly serious for them and that their need for individual protection is urgent.

Furthermore, the claim that the District Court should declare that the state has violated the Convention rights of the group members by failing to take certain listed measures to achieve certain stated objectives in relation to climate change is not admissible. This is due to the consideration of the interest in maintaining the division of responsibilities between courts and other public bodies and the state's margin of appreciation in such matters. For similar reasons, the claim that the state should be ordered to take certain specific measures is also not permissible.

Against this background, the Supreme Court finds that the present action is inadmissible.

"The Supreme Court has thus concluded that the group members' action, as formulated at the District Court, is inadmissible. The court has not taken a position on how the issue should be assessed if the action was brought by an association and if the action was limited to requesting a declaration that the state violated their rights under the European Convention of Human Rights by not taking sufficient measures to counteract the effects of climate change," says Jonas Malmberg, who was one of the Justices of the Supreme Court in the case.

Case number: Ö 7177-23

*A translation into English of the Supreme Court's decision will be available within a few weeks.*

Name

"The action regarding climate change"

Contact

Press contact

Phone: +46 8-561 666 30

E-mail: [HDO-Presskontakt@dom.se](mailto:HDO-Presskontakt@dom.se)

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