



KlimaSeniorinnen v Switzerland – a Swiss Perspective on Climate Litigation

Lloyd's Market Association (LMA), 8 May 2024, London UK
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I. What is "Climate Litigation"?

- No generally accepted definition
- Private climate lawsuits
 - Individuals or associations (NGOs) against a private party (company)
 - Primary legal basis in private law: General liability norms in tort and corporate law, applied to the specific climate context
 - Goal: Hold companies responsible for the effects of climate change (including monetary claims)
- Public climate lawsuits
 - Individuals or associations (NGOs) against state actors
 - Primary legal basis in public law: Fundamental and human rights
 - Goal: Force state to take actions to reduce greenhouse gas emissions

II. (Climate) Litigation Framework in Switzerland

- Currently no class actions in Switzerland
 - Joinder of parties (*Streitgenossenschaft*) if claim is based on same facts, legal grounds and the same procedure is applicable, but each party still enforces its own claim (no group claim)
 - Class actions are not part of the current revision of the Swiss Code of Civil Procedure
 - But ongoing debate in Swiss Parliament to extend collective legal protection, for instance through means of a representative action (similar to *Musterprozess* in Germany)
 - No "ideal right of appeal for associations" ("*Ideelles Verbandsbeschwerderecht*") in climate law
 - Further clarifications necessary due to *KlimaSeniorinnen*-decision
- Third-party funding permitted in Switzerland, but still relatively rare
- Climate litigations in Switzerland funded mostly by NGOs (Greenpeace, European Center for Constitutional and Human Rights, Swiss Church Aid HEKS/EPER) because claims not (primarily) of monetary nature but aimed to change policy

III. Private Climate Litigation – Asmania et al v. Holcim

- Two categories:
 - "External cases" (claimant has no corporate or legal connection to defendant), e.g.:
 - Milieudefensie et al. v Shell
 - **Asmania et al v Holcim**
 - Violation of personality rights (Art 28 Swiss Civil Code)
 - Reduction of CO2 emissions
 - Damages and compensation (CHF 3,500 per person in total)
 - "Internal cases" (claimant is affiliated to defendant, e.g. as shareholder, creditor or insurer), e.g.
 - ClientEarth v Shell and Directors of Shell
 - Church of England Pensions Board et al v Volkswagen
- Prerequisites for compensation: **damages**, violation of right, **causality**, culpability

IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland

- Senior Women for Climate Protection Switzerland Association (*KlimaSeniorinnen Schweiz*) founded in August 2016 by approximately 150 senior women
- Currently represents over 2,500 women aged 64 and over
- Objective: Promotion and realization of effective climate protection and the reduction of greenhouse gas emissions throughout Switzerland
- Funding: Membership fees, donations, Greenpeace Switzerland and other organizations



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IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland

- According to *KlimaSeniorinnen Schweiz*, current Swiss climate legislation is insufficient, **unconstitutional and contrary to conventions**
- 25 November 2016: **Request** to the Federal Council, the Department of the Environment, Transport, Energy and Communications, the Federal Office for the Environment and the Swiss Federal Office of Energy to take **specific measures for climate protection**
- **Legal basis:** Violation of
 - precautionary principle (Art. 74 para. 2 Federal Constitution)
 - principle of sustainability (Art. 73 Federal Constitution)
 - right to life, health and physical integrity (Art. 10 Federal Constitution; Art. 2 European Convention on Human Rights)
 - right to the protection of private and family life (Art. 8 European Convention on Human Rights)

IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland



- 25 April 2017: **Department of the Environment**, Transport, Energy and Communications rejected the request and decided not to intervene
- 26 May 2017: Appeal to the Federal Administrative Court
- 27 November 2018: **Federal Administrative Court** dismisses the appeal
 - The Federal Administrative Court recognised the impact of climate change on humans, animals and plants
 - However, it considered that the appellants were not affected beyond the general public: "*The appellants therefore do not have a sufficient interest worthy of protection*"
- 21 January 2019: Appeal to the Federal Supreme Court
- 5 May 2020: **Federal Supreme Court** dismissed the appeal ([BGE 146 I 145](#))














IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland

- 1 December 2020: Application to the **European Court of Human Rights (ECtHR)** in Strasbourg
- 29 March 2023: Public hearing before the ECtHR
- 9 April 2024: ECtHR decides (mostly) in favor of *KlimaSeniorinnen Schweiz* ([judgment on application no. 53600/20](#))
 - Standing of *KlimaSeniorinnen Schweiz* to claim a Human Rights violation
 - The States' margin of appreciation
 - The States obligation in regard to Climate Change
 - Switzerland violated certain Human Rights of the applicants, in particular Art. 8 ECHR (right to respect for private and family life) and Art. 6 para. 1 ECHR (access to court).



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IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland

Ground for Complaint	Swiss Supreme Court	ECtHR
Standing to sue (Verein <i>KlimaSeniorinnen</i> Schweiz and four individuals)	 	 
Art 25 Administrative Procedure Act: " <i>Any person who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it: a. refrains from, discontinues or revokes unlawful acts [...]</i> "		N/A
Art 6 ECHR: Right to a fair trial		
Art 2 ECHR, Art 10 (1) Federal Constitution: Right to life		
Art 8 ECHR, Art 13 (1) Federal Constitution: Right to respect for private and family life		 *
Art 13 ECHR: Right to an effective remedy		

* Dissenting opinion by Judge Tim Eicke

IV. Public Climate Litigation – KlimaSeniorinnen v Switzerland

International court rules Switzerland violated human rights



Christian Hartmann/Reuters

In a landmark climate judgment, the country's failure to adequately tackle the crisis breached the rights of more than 2,000 women who brought the case to the court in France



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La décision historique a été prise après une requête de 2 500 femmes qui dénonçaient des « manquements des autorités suisses pour atténuer les effets du changement climatique ». La France n'a pas été condamnée à la suite d'une autre requête, déposée par l'ex-maire de Grande-Synthe.

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V. Consequences of ECtHR-decision

- *KlimaSeniorinnen Schweiz* can request a revision of the decision of the Federal Supreme Court
- *KlimaSeniorinnen Schweiz* can request authorities to duly consider their concerns
- But beyond that? Not clear:
 - New CO2 Act has recently been approved by the Swiss Parliament (referendum deadline has not yet lapsed); it is unlikely that the Swiss Parliament will reopen the debate over the Act
 - Signalling effect to national courts to apply stricter standards (also in private climate litigations)
 - Potentially boost to private climate litigation in Switzerland and abroad

VI. Key Takeaways

- Climate litigations are still rare in Switzerland
- Swiss courts are generally reluctant with regard to climate related disputes, threshold to enforce damages claims very high
- No class actions (yet)
- Immediate impact of ECtHR-decision is limited, but could lead to more individuals or climate organisations enforcing human rights laws in Switzerland and abroad
- Risk that the ECHR could override judgments of national courts concerning public climate litigation is significantly increased, and potential indirect boost to private climate litigations due to signalling effect to national courts

VII. Questions and Discussion





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