

KlimaSeniorinnen v Switzerland - environmental justice through the ECHR?

Estelle Dehon KC
Cornerstone Barristers

November 2024

KlimaSeniorinnen Schweiz



Lineage of ECtHR Cases

**López Ostra v
Spain (1994)**

**Taşkin v
Turkey (2004)**

**Cordella v
Italy (2019)**



The Argument

- Particular risk from impacts of climate change due to age and gender
- Art 2 & 8 obligations
- “States are under an obligation to establish and enforce all necessary legislative and administrative measures within their power to achieve reductions of GHG emissions in line with international climate law and the best available science”

Standing

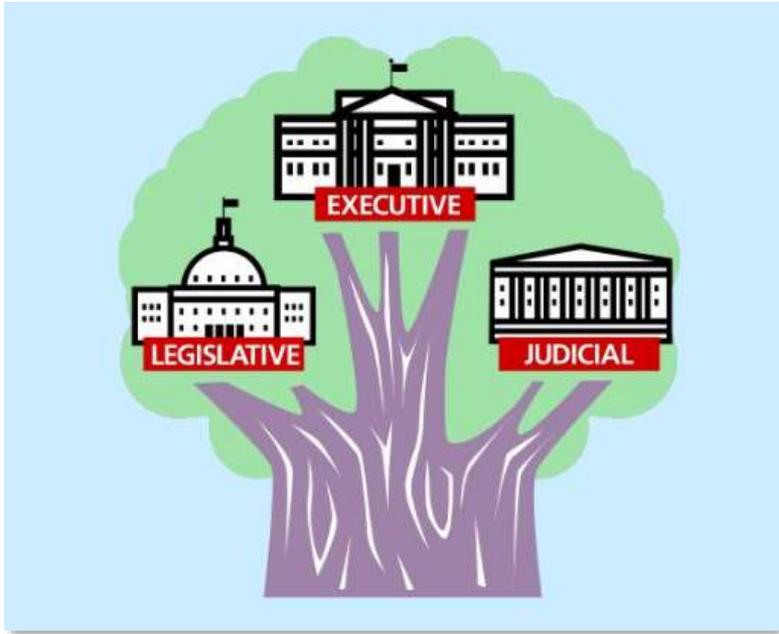
- “Intergenerational burden sharing”
- New test for associations bringing claims on behalf of victims of climate change
- Individual claimants had not demonstrated sufficient “intensity” of exposure, but the Klimaseniorinnen group met the test



Deliberate development of the law

- Nature and gravity of the threat posed by climate change not appropriately dealt with in the existing case law
- Explicit reason for development was causation: the Court needed to adapt its established principles because climate change causes harm very differently

“while drawing some inspiration from the principles set out in the Court’s existing case-law, the Court will seek to develop a more appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change”



Separation of powers

- Judicial intervention cannot replace or provide any substitute for action that must be taken by the legislative and executive branches of government
- Equally, the Court cannot ignore its role as a judicial body tasked with oversight of compliance with legal requirements and protecting individuals' rights

State's arguments dismissed

- “Drop in the ocean”
- Climate change polycentric
- Long-term impact of climate change
- Margin of appreciation



Art 8 positive duty to protect citizens from climate change

**GHG
reduction
measures**

**Target
timeline**

**Inter-
mediate
targets**

**Evidence of
compliance**

**Keep
targets
updated**

**Adopt
effective
measures**



The Outcome

- Article 8 breached:
 - IPCC calculations: industrialised states like Switzerland required, inter alia, to cut their emissions by 25-40% from 1990 levels by 2020
 - Swiss government admitted that had been missed
 - No practical measures in place to achieve the targets for planned emissions cuts to 2050
- Article 6(1) also breached

Enforcement at ECtHR Level

- Swiss government criticised the judgment and effectively refused to implement the court's ruling
- Swiss Government submitted an “Action Plan” to the ECtHR
- Argued new domestic legislation, approved immediately before and after the ruling had already corrected Switzerland's Net Zero trajectory
- Not an action plan, but rather an action report, unlikely to satisfy ECtHR or the Klimaseniorinnen (intended Rule 9 submission)

Embedding UK Environmental Rule of Law

- "the State's primary duty is to adopt, and effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible future effects of climate change", as well as "adaptation measures aimed at alleviating the most severe or imminent consequences of climate change", which must be "effectively applied in accordance with the best available evidence"

• *"climate protection should carry considerable weight in the weighing-up of any competing considerations"*

Current UK Position



- Net Zero Strategy challenge: R (Friends of the Earth, ClientEarth & Good Law Project) v SSBEIS [2022] EWHC 1841 (Admin)
- Carbon Budget Delivery Plan challenge: R (Friends of the Earth, ClientEarth & GLP) v SSESNZ [2024] EWHC 995 (Admin)



Potential UK Human Rights Litigation

**Immediate
spike
unlikely**

**Northern
Ireland –
maybe?**

**Standing
changed?**

**Potential
additional
ground**

**Effective &
consistent
action**

**Gravita-
tional
pull**



Thanks!

Ask more questions
estelled@cornerstonebarristers.com

For instructions
teamdaryl@cornerstonebarristers.com