

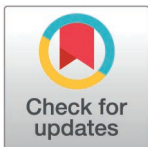
OPINION

KlimaSeniorinnen case: Climate change legal scholarship needs empiricism, not hype

Julien Bétaille¹ , Guillaume Chapron^{2*} **1** Law School, Toulouse Capitole University, Toulouse, France **2** Department of Ecology, Swedish University of Agricultural Sciences, Riddarhyttan, Sweden* guillaume.chapron@slu.se

Abstract

In April 2024, the European Court of Human Rights ruled in the *KlimaSeniorinnen* case that Switzerland had not implemented a legal framework capable of addressing climate change and that this constituted a violation of the right to private and family life. Despite being celebrated as “historic,” this ruling reflects established case law rather than a legal breakthrough. Hyperbolic reactions reveal a lack of empirical rigor in legal commentary, which undermines evidence-based climate policymaking. We caution against exaggerating the impact of individual rulings, given limited evidence of their influence on climate policies and emissions reductions, and encourage legal scholars to instead adopt methodological rigor akin to practices in other scientific disciplines. Specifically, we advocate for empirical approaches in law, through comprehensive data collection, robust statistical methods, and systematic analysis to better understand the role of courts in climate change mitigation.



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In April 2024 the European Court of Human Rights (ECHR) handed down its decision in the *KlimaSeniorinnen* case. The case involved a Swiss organization representing older women arguing that the Swiss government had violated their right to private and family life by failing to take necessary measures against climate change—a threat that significantly impacts elderly women, particularly by increasing their health and mortality risks. The Court held that “States have a positive obligation to put in place the relevant legislative and administrative framework designed to provide effective protection of human health and life” and ruled that Switzerland had not implemented a legal framework capable of addressing climate change, which constituted a violation of “the right to private and family life and home under Article 8 of the Convention” (ECHR, 9 April 2024, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, pts 538 a, 546 and 548). This ruling, adding to the growing body of climate change litigation, immediately triggered celebrations, with prominent legal scholars describing it as “historic and unprecedented” [1], “game changer” [2], “groundbreaking” [3]. In the following few months since the ruling, academic publications have similarly described it as “groundbreaking” [4], “landmark” [5] or “milestone” [6]. The lawyer representing the plaintiffs appeared in the journal *Nature*’s 10 list of “the people who helped shape science in 2024” [7].

There is only one problem with these hyperbolic epithets: they do not apply to this court ruling which, from a legal perspective, was not unexpected at all. More than signalling any

legal paradigm shift, the celebratory tone of legal commentators suggests a lack of hindsight in understanding the role of courts in addressing climate change. We need less hype and more rigorous empirical approaches to clarify this role.

The *KlimaSeniorinnen* ruling is simply yet another example of the Court's long-standing practice of an evolving interpretation of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, particularly concerning the environment. The Court ruled that the right to private and family life implies a protection against adverse effects of climate change, which necessarily requires states to take appropriate measures. This legal interpretation is certainly not new. The Court itself says in the *KlimaSeniorinnen* ruling that it "already held long ago that the scope of protection under Article 8 of the Convention extends to adverse effects on human health, well-being and quality of life arising from various sources of environmental harm and risk of harm" (pt. 544). Indeed, several decades ago, the Court had already held that environmental damages may be in violation of this right (e.g., ECHR, 9 December 1994, *Lopez Ostra v. Spain*, no. 16798/90, pt. 51). More recently, the Court held that States have "a primary duty to establish a legislative and administrative framework aimed at the effective prevention of damage to the environment and human health" (ECHR, 27 January 2009, *Tatar v. Romania*, no 67021/01, pt. 88).

Barring a few nuances, the Court has not ruled differently in the *KlimaSeniorinnen* case of 2024. Unless one considers that climate change is not an environmental issue, which would obviously be wrong, one must admit that the Court's reasoning does not go any further than existing case law.

It is therefore difficult to find a substantial basis behind the exuberant reactions of the scholars having commented on that case. Although a critical appraisal has not been absent from all comments [8], the reaction of the legal community has overall been marked by an enthusiasm that is at odds with the substantive content of the Court's decision.

This hyperbolic coverage of the ruling reflects a lack of hindsight that is ultimately damaging to the development of evidence-based policy making. One may understand that an NGO involved in the case, necessarily concerned with their reputation, may try to convince the public of the historical nature of this decision. However, such behaviour when adopted by legal scholars reflects a confusion of roles. It is not because one personally appreciates a court decision that this necessarily renders this decision "historical". It is therefore critical, especially on such a politically charged issue as climate change, to keep to a strict distinction between facts and opinions. Such a lack of hindsight is at odds with rigorous legal scholarship [9].

Grounding legal comments on empirical approaches provides a method to move from opinion to evidence. This type of approach is also not new – its origins date back to the beginning of the 20th century – but today the development of open data, sophisticated statistical methods, combined with artificial intelligence and Large Language Models, facilitates the use of experimental methods in legal scholarship. The latter can only benefit from empiricism [10], as has been the case in medicine from the 19th century onwards and in so many other disciplines.

For example, whereas the *Lopez Ostra* 1994 ruling by the ECHR has often been referred to in the legal literature as emblematic, it was recently shown that the main elements of the Court's reasoning in this case were already present in several previous decisions on airport nuisance handed down a decade earlier. Gaining such insights was only possible thanks to a genuinely empirical approach carrying out a comprehensive analysis of all the Court's environmental decisions (more than 3,000 cases between 1950 and 2013) [11].

Referring back to *KlimaSeniorinnen*, Blattner stated in *Nature* that "the ruling is bound to alter the course of climate protection around the world" [3]. Because it is not supported by empirical evidence, this statement contributes to perpetuating speculative beliefs about the role of the law to address climate change. Evidence on the matter appears mixed. According to

the 2022 IPCC report (AR6), “it is still unclear the extent to which climate litigation actually results in new climate rules and policies” [12]. Existing literature about the impacts of such litigation is described as “brief, anecdotal and speculative in nature” [13]. The few studies on the impact of climate litigation generally rely on the *Sabin Center’s Global Climate Change Litigation Database*, which appears to suffer from selection bias (cases from some states are missing but should have been included, whereas cases unrelated to climate change mitigation or adaptation are included). Broadly speaking, the link between a single specific case and a reduction in greenhouse gas emissions remains questioned [14] and unambiguously establishing a causal relationship is difficult, as no randomized experiments can be carried out. When effects are however detected, they appear relatively modest: an analysis of climate change lawsuits against US and EU listed corporations found that litigation reduced firm value only by -0.41% [15]. It is therefore important to remain cautious and avoid hyperbolic statements, given the current state of knowledge on the matter.

We encourage legal scholars to collect more legal data, produce more empirical studies, and improve the quality of their data as well as the statistical rigour of their analyses on which their legal comments will need to be based. Our understanding of the role courts in addressing climate change can only improve from these efforts.

Author contributions

Conceptualization: Julien Bétaille.

Funding acquisition: Julien Bétaille, Guillaume Chapron.

Investigation: Julien Bétaille, Guillaume Chapron.

Methodology: Julien Bétaille.

Project administration: Julien Bétaille, Guillaume Chapron.

Writing – original draft: Julien Bétaille.

Writing – review & editing: Julien Bétaille, Guillaume Chapron.

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