

11th INTERNATIONAL CRIME AND  
PUNISHMENT FILM FESTIVAL  
ENVIRONMENTAL JUSTICE FOR ALL

26 NOVEMBER – 2 DECEMBER 2021

ISTANBUL UNIVERSITY DOCTORATE HALL

# Whistleblowing for the Global Climate

Prof. Dr. Marc Thommen

University of Zürich

# LAC-Urteil

How many Tennis Champions  
do you need to hide

CREDIT SUISSE  dirty business?

Marc Thommen/Jascha Mattmann,  
Whistleblowing für das Weltklima,  
[sui generis 2021, S. 13](#)



# Basic question

Can activists who commit crimes (acts of vandalism, unauthorised demonstrations, resistance to state authority) to draw attention to climate change invoke a state of "climate necessity"?



# Hypothesis

If activists commit crimes to raise awareness (blow the whistle) for global warming, their acts cannot be justified, but at least excused.



# Criminal Liability

Elements of Crime	Objective Elements <ul style="list-style-type: none"><li>– Act</li><li>– Result</li><li>– Causation</li></ul>	Subjective Elements <ul style="list-style-type: none"><li>– Intent</li><li>– Conditional Intent</li></ul>
Unlawfulness	Justificatory <ul style="list-style-type: none"><li>– Necessity</li><li>– State of Emergency</li><li>– Whistleblowing</li></ul>	
Culpability	Excusable <ul style="list-style-type: none"><li>– Necessity</li><li>– State of Emergency</li><li>– Whistleblowing</li></ul>	

# Index

- I. Facts
- II. Crimes
- III. Justifications
- IV. Excuses
- V. Summary



# Whistleblowing

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# Lausanne Action Climate

- Between 2016 and 2018, Credit Suisse invested a total of 57.4 billion dollars in fossil fuels, which are responsible for the majority of global greenhouse gas emissions.



# Lausanne Action Climate

- On 22 November 2018, a group of around 20 people from the movement “Lausanne Action Climate” dressed as tennis players entered the entrance hall of the Credit Suisse branch in Lausanne to play a mock game of tennis.



# Lausanne Action Climate

- The activists' aim was to draw attention to climate change in general and to demonstrate against Credit Suisse's investments in fossil energies.
- They played tennis because the Swiss Tennis Player Roger Federer is sponsored by Credit Suisse.



# Lausanne Action Climate

- Under #SiRogerSavait (If Roger only knew), they wanted to draw attention to the bank's climate-damaging investments.
- The activists behaved peacefully and did not prevent the bank's customers from passing by.



# Lausanne Action Climate

- The activists refused to leave the bank.
- The police broke up the action by carrying them out.



# Lausanne Action Climate

- 13 January 2020 Lausanne District Court acquitted all defendants.



# Lausanne Action Climate

- This acquittal made news around the world: BBC, New York Times, Retweet by Greta Thunberg, Reaction Roger Federer

Swiss Politics

Climate activists behind  
Credit Suisse tennis  
stunt acquitted





# Lausanne Action Climate

- 22 September 2020, Cantonal Appellate Court convicts activist for trespassing and violating the Lausanne police regulations.
- They receive minor monetary penalties.



# Lausanne Action Climate

- 26 May 2021, Federal Supreme Court confirms convictions (6B\_1295/2020).



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# Article 186 – Unlawful Entry

Any person who, against the will of the owner, unlawfully enters a house... or who remains therein despite the request of the owner to leave, shall be liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

The logo consists of a white rounded square containing the text 'StGB' in a large, bold, black serif font. Below it, the words 'Schweizerisches' and 'Strafgesetzbuch' are written in a smaller, black, sans-serif font, stacked vertically.

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# Article 286 – Obstruction of an official act

Any person who prevents ... a civil servant from performing an act that is within their official powers shall be liable to a fine not exceeding 30 daily penalty units.

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# Article 17 – Justifiable necessity

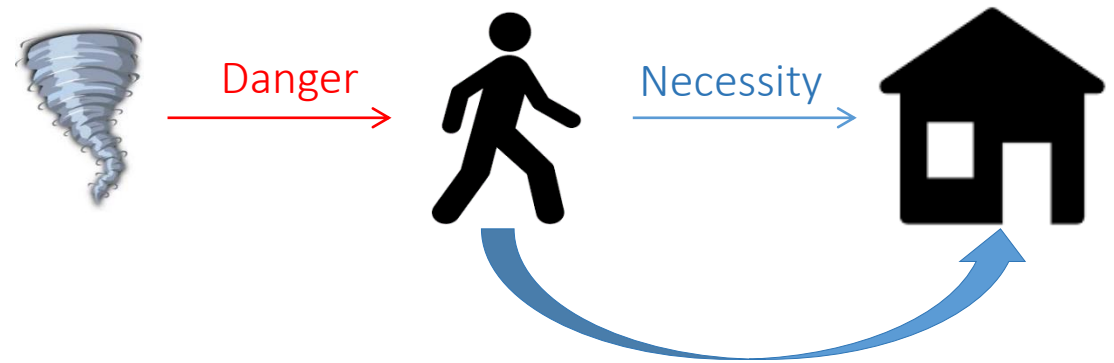
Situation of necessity

- Individual interest
- Danger
- Immediacy



Act of necessity

- Suitability
- Subsidiarity
- Weighing of interests



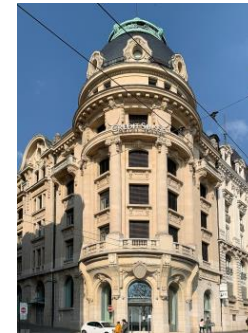
# Necessity



Climate Change

Contribution

**CREDIT SUISSE**



Violation of property rights



Endangered: Life/Health of the activists?



# Article 17 – Justifiable necessity

Situation of necessity

- Individual interest
- Danger
- Immediacy



Act of necessity

- Suitability
- Subsidiarity
- Weighing of interests



Danger



Necessity



# Article 17 – Assistance

A person who commits an act that is punishable by law in order to save his or her own legal interests or those of another person from an immediate danger that cannot be averted in any other way is acting lawfully if in doing so he or she is safeguarding interests of a higher order.



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# Assistance



Endangered:  
Life/Health of farmer



Climate Change

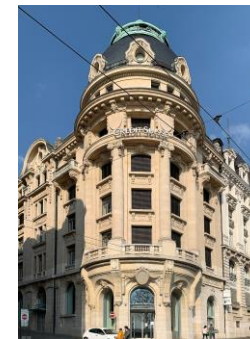
Contribution

**CREDIT SUISSE**



Endangered: Life/Health of the activists?

Violation of property rights



# Assistance

Situation of necessity

- 3<sup>rd</sup> party interest
- Danger
- Immediacy



Act of necessity

- Suitability
- Subsidiarity
- Weighing of interests



# State of Emergency

- Extra-statutory justification
- Commission of crime...
- ...to protect of common goods



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# State of Emergency



Endangered:  
Life/Health of mankind



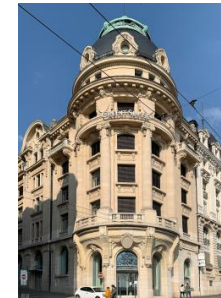
Climate Change

Contribution

**CREDIT SUISSE**



Violation of property rights





# State of Emergency

Situation of necessity

- Common interest
- Danger
- Immediacy



Act of necessity

- Suitability
- Subsidiarity
- Weighing of interests



# «Whistleblowing»

- Extra-statutory justification
- Commission of crime...
- ...to pursue a socially desired goal
- ...or to engage in constitutionally protected activity



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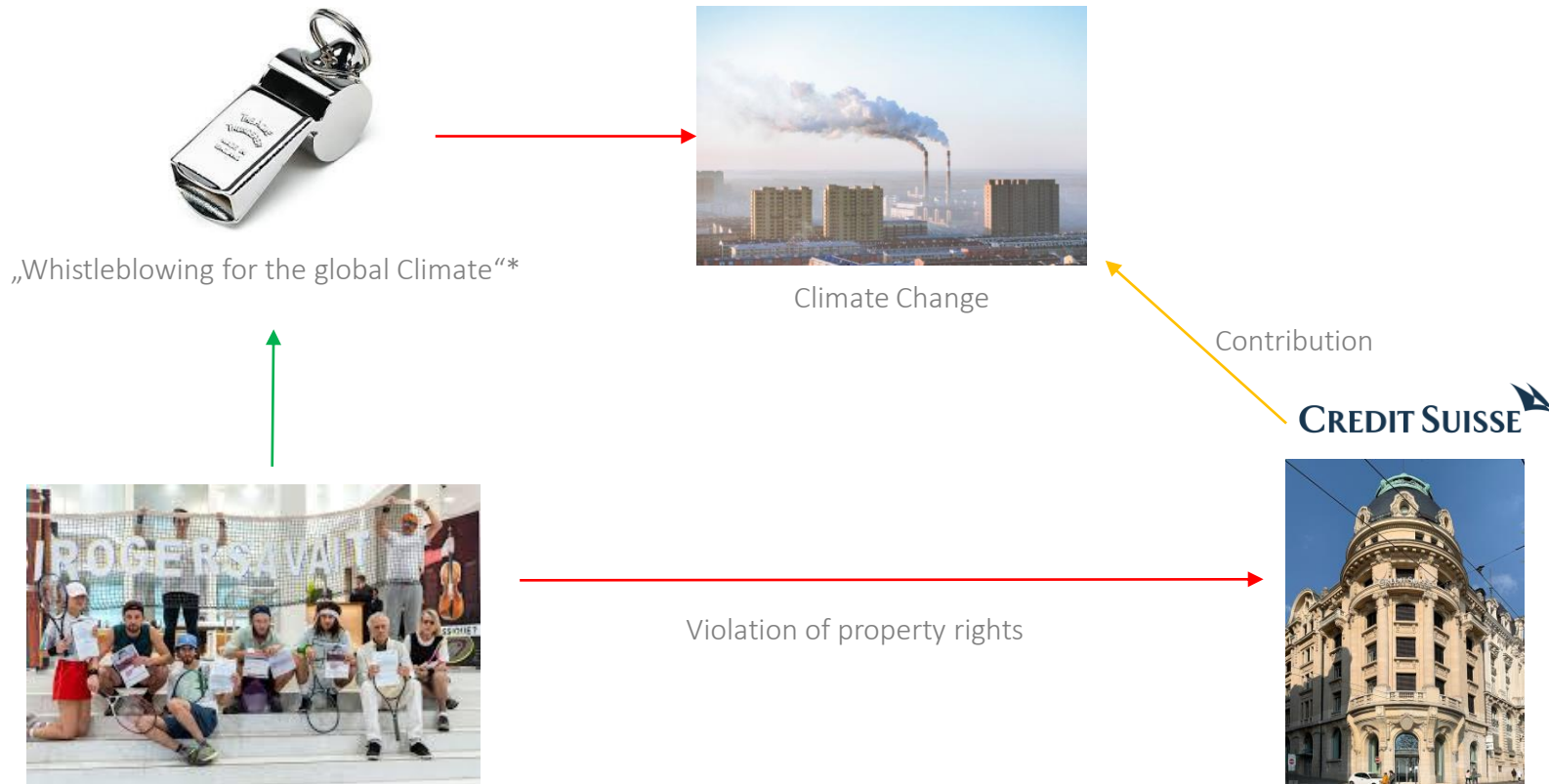
# «Whistleblowing»

The crime of the activists could be justified not because they wanted to save lives but because they wanted to raise awareness for global warming, i.e. to blow the whistle for world climate.

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# «Whistleblowing»



\*Thommen/Mattmann, Whistleblowing für das Weltklima, [sui generis 2021, S. 13](#)

# «Whistleblowing»

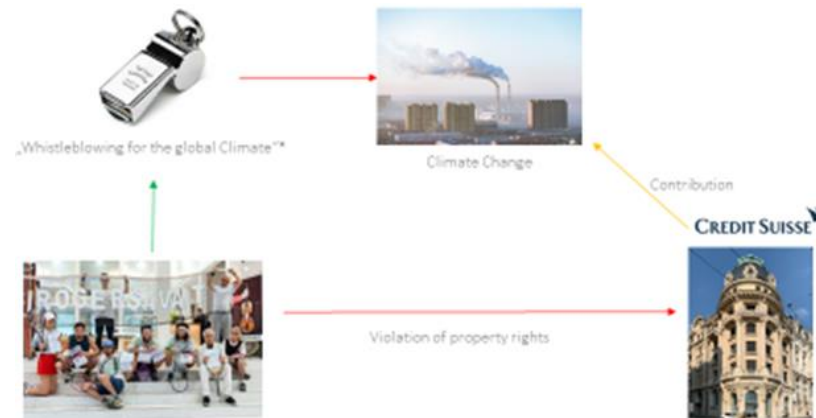
## Goal

- Socially desired
- Constitutionally prot.



## Means

- Suitability
- Subsidiarity
- Weighing of interests



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# «Whistleblowing»

- Extra-statutory **excuse**
- Commission of crime...
- ...to pursue a socially desired goal
- ...or to engage in constitutionally protected activity



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# «Whistleblowing»

The crime of the activists could be excused because they wanted to raise awareness for global warming, i.e. to blow the whistle for world climate.

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# «Whistleblowing»

## Goal

- Socially desired
- Constitutionally prot.



## Means

- Suitability
- Subsidiarity
- Weighing of interests



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# Whistleblowing

We showed that activists who commit crimes to raise awareness (blow the whistle) for global warming, their acts cannot be justified, but at least excused.



# Whistleblowing for the Global Climate

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