

Climate Change Litigation: The European Court of Human Rights Finds Violation of Convention Rights

24 April 2024

On 9 April 2024, the European Court of Human Rights (the “Court”) handed down highly-anticipated judgments in three cases examining States’ obligations in relation to climate change under the European Convention on Human Rights (the “Convention”): *Verein KlimaSeniorinnen Schweiz and Ors v Switzerland* (“*KlimaSeniorinnen*”); *Carême v France* (“*Carême*”); and *Duarte Agostinho and Others v Portugal and 32 Others* (“*Duarte Agostinho*”).

The claims were brought against a background of increasing efforts to utilize international human rights instruments as a basis for bringing climate-related claims. In recent years, for example, the UN General Assembly adopted Resolution 76/300 of 28 July 2022, recognising the human right to a clean, healthy and sustainable environment, and the UN Human Rights Committee recognised in its General Comment No. 36 of the link between environmental protection and the right to life.

The Court’s three judgments represent a significant development to this trend. While the Court held that the claims in *Carême* and *Duarte Agostinho* were inadmissible, the *KlimaSeniorinnen* judgment—in which the Court ruled for the first time that a State’s failure to take actions to mitigate climate change breached Article 8 (right to private and family life) and Article 6(1) (right to fair trial) of the Convention—is a significant development. The Court’s decision was based on its finding that Switzerland had failed to adopt a domestic regulatory framework to quantify national greenhouse gas emissions and meet its own emission reduction targets. The Court also found that the Swiss courts had failed to hear legal challenges against the authorities’ inaction.

The Court’s acknowledgement that States have a responsibility to take action to combat climate change under the Convention will undoubtedly influence, and embolden, future climate change litigation efforts. The *KlimaSeniorinnen* judgment is likely to influence the domestic courts’ approach to such claims, including on key issues such as admissibility, standing and causation. In addition to litigation, the Court’s decision that States must act to combat climate change under the Convention may well prompt a fresh wave of climate-related regulation, as least among States that are Contracting Parties to the Convention.

KlimaSeniorinnen v Switzerland

Verein KlimaSeniorinnen Schweiz, a Swiss non-governmental organisation established to fight climate change on behalf of elderly women living in Switzerland, and four individual Swiss nationals filed a joint complaint alleging that the Swiss authorities' failure to mitigate climate change breached the Convention. Their core claim was that climate change-induced heatwaves posed particular health risks to older women in breach of their right to life under Article 2 and right to private and family life under Article 8, which encompasses personal autonomy and the right to age with dignity. The applicants further claimed that the Swiss authorities were aware of these risks but had failed to take measures to achieve the Paris Agreement's 1.5°C limit, as well as binding targets to meet its 2030 and 2050 climate goals.

To bring a claim before the Court, applicants must prove victim status by being "*personally and directly affected by the impugned failures*" of the respondent State. Associations are subject to a different test and must show that they were validly constituted, and their aim is to defend affected individuals' human rights. The Court ultimately found that only Verein KlimaSeniorinnen Schweiz had standing to bring its claims. The individual applicants had failed to meet the applicable severity threshold in relation to the adverse climate change consequences affecting them.

The Court recognised that the claim required engagement with "*complex scientific evidence*" and attached particular importance to the reports of the Intergovernmental Panel on Climate Change (the "IPCC"). On the basis of the IPCC's findings, the Court considered that: (i) anthropogenic climate change poses a threat to the enjoyment of Convention rights; (ii) States are aware and capable of taking measures to lower the risks by limiting temperature increase to 1.5°C above pre-industrial levels; and (iii) current mitigation efforts are insufficient to meet the target.

As to causation, the Court held that the typical "*but for*" causal test is inapplicable in climate change cases, and that Verein KlimaSeniorinnen Schweiz had established a "*legally relevant relationship of causation*" based on cogent scientific evidence that climate change had led to increased morbidity among certain vulnerable groups. State responsibility would be engaged where "*reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm.*"

The Court determined that Article 8 would be triggered if there was an "*actual interference*" (or a sufficiently serious risk of interference) with the right to private and family life. Switzerland had breached Article 8 due to a "*critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, including*

a failure by them to quantify [] emissions limitations” and to meet their own emission targets. The Court also found that the Swiss courts’ failure to hear the challenge to the government’s inaction further breached Article 6. However, the Court considered it was “questionable” whether Switzerland’s omissions could trigger Article 2 in respect of the applicants and rejected that claim.

Carême v France; Duarte Agostinho v Portugal

In *Carême*, the applicant, Damien Carême, was a former mayor of the Grande-Synthe municipality in Northern France. In November 2018, acting on his own behalf and in his capacity as mayor, Mr Carême requested that the French authorities implement a raft of climate change measures. When no action was forthcoming, Mr Carême applied to the Conseil d’État for judicial review on the basis that the authorities had implicitly rejected his requests. The Conseil d’État ordered the French authorities to enact measures to mitigate the effects of climate change in the region but rejected the request brought on the applicant’s own behalf. In January 2021, Mr Carême lodged an application with the Court, arguing that France had failed to take appropriate steps to prevent climate change in violation of Articles 2 and 8 of the Convention.

Meanwhile, the claim in *Duarte Agostinho* was brought by six Portuguese nationals, born between 1999 and 2012, against Portugal and 32 other Convention States. The applicants argued that they were exposed to a risk of harm from climate change which was expected to increase during their lifetime and also affect their own future children. The applicants complained of adverse climate change impacts on their wellbeing and the increased wild fire risk (which prevented one of the applicants from attending school on one occasion). They argued that the respondent States were in breach of Articles 2 and 8, as well as Article 14 (protection from discrimination) of the Convention.

The Court ruled that both claims were inadmissible:

- The applicant in *Carême* could not personally claim victim status because he no longer lived in France (having moved to Brussels in May 2019) and, therefore, had no real connection to the allegedly affected place.
- The Court also dismissed Mr Carême’s claim in his capacity as former mayor of the Grande-Synthe municipality, noting that decentralised authorities exercising public functions are governmental organisations which do not have standing under the Convention.

- In *Duarte Agostinho*, the Court only accepted jurisdiction over the claims against Portugal (where the applicants are resident), declining jurisdiction over the other respondent States. The Court noted that, save for limited circumstances, States are only required to guarantee Convention rights within their own territory. It found that there was no basis to expand States' extraterritorial jurisdiction in the climate change context.
- The *Duarte Agostinho* claims were also inadmissible because the applicants had failed to satisfy the "exhaustion of domestic remedies" requirement before the Portuguese courts. Instead, they had impermissibly elected to bring their claims directly to the Court.

Commentary: Assessing the Impact of *KlimaSeniorinnen* on Climate-Rights Litigation

KlimaSeniorinnen, *Carême* and *Duarte Agostinho* were heard by the same composition of the Grand Chamber, which indicates a degree of consistency across the three judgments, notwithstanding their different outcomes.

The dismissal of the claims in *Carême* and *Duarte Agostinho* suggest that the Court will not disapply or broaden its ordinary admissibility requirements such as territorial jurisdiction, standing, victim status or exhaustion of domestic remedies, notwithstanding the exhortation that the urgency of the climate crisis requires immediate and substantive judicial intervention.

In contrast, the *KlimaSeniorinnen* judgment, reached by a majority of 16 out of 17 judges, will provide renewed impetus to litigants seeking to utilise a rights-based approach to climate litigation. The Court, in holding that States' inaction (or inadequate action) in setting and meeting emissions targets under the Paris Agreement can constitute breaches of Convention rights, has broken new ground. While the bar to admissibility remains high, the Court acknowledged that, pursuant to the "living instrument" doctrine, the Convention extends to climate change-related claims. The Court further demonstrated a willingness to grapple with scientific evidence, lending its voice to the increasing number of domestic and international legal bodies that have accorded considerable weight to the IPCC's findings. Critically, on causation, the Court applied a less stringent test and determined that State responsibility for Convention breaches may be established where "*reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm*".

The Court's judgments are likely to have wide-reaching implications:

- All Convention States incorporate the Convention into domestic law. As such, litigants can be expected to leverage the findings in *KlimaSeniorinnen* in domestic proceedings against both public authorities and private corporate actors. Claimants have already successfully invoked the Convention to impose tougher emission reduction targets in, for example, the Netherlands. In 2019, the Dutch Supreme Court in *Urgenda* held that the Dutch state had a duty to reduce greenhouse emissions by at least 25% by 2020. Notably, that duty was informed by Articles 2 and 8 of the Convention.
- Increasing rights-based litigation and litigation risk before the Court and domestic courts charged with implementing the Convention may provide renewed incentives for Convention States to introduce new climate change regulations to meet their international commitments. Any such efforts could have significant knock-on effects for companies, including new restrictions on Scope 1, 2 and 3 emissions and increased reporting obligations.
- The judgments' influence is likely to extend beyond Europe, spurring on similar claims before the Court and other regional and international human rights bodies. In the last five years alone, 12 climate change cases have been filed at the Court.

* * *

Please do not hesitate to contact us with any questions.



Catherine Amirfar
Partner, New York
+1 212 909 7423
camirfar@debevoise.com



Conway Blake
Partner, London
+44 20 7786 5403
cblake@debevoise.com



Natalie L. Reid
Partner, New York
+1 212 909 6154
nlreid@debevoise.com



Samantha J. Rowe
Partner, London
+44 20 7786 3033
sjrowe@debevoise.com



Sara Ewad
Associate, London
+44 20 7786 5525
sewad@debevoise.com



Jesse Hope
Associate, London
Tel: +44 20 7786 5420
jhope@debevoise.com



Diana Moise
Associate, London
+44 20 7786 5504
dmoise@debevoise.com



Barney Lynock
Trainee Associate, London
+44 20 7786 5444
blynock@debevoise.com