

European Human Rights Court Confirms “Pressing Urgency of Climate Change” – What Are the Implications for Companies?

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I Introduction

As previously reported, climate change-related legal action is growing in frequency and variety, increasingly placing it in the public’s focus.¹ Potential plaintiffs are known to include individuals, groups, labor unions, NGOs, shareholders and investors who claim to have suffered negative effects in connection with climate change. Defendants are no longer only governments; increasingly, corporations and financial institutions find themselves targets of such actions. With the further tightening of European sustainability regulations, this trend will continue. In this newsletter, we highlight the implications that three recent rulings by the European Court of Human Rights (“ECHR”) might have for companies.

II Swiss Association Wins Case before the ECHR – Two Other Cases Dismissed

On April 9, 2024, the ECHR issued the long-awaited rulings in its first three climate cases.² While the applicants were only successful in one of the cases, the outcome of the cases is likely to boost climate lawsuits in general.

1. Brief overview of the unsuccessful cases

In the case of *Carême v. France*, a French national living in Brussels claimed a violation of his rights under the European Convention on Human Rights (the “Convention”) alleging that the steps France had taken to prevent climate change were insufficient. In particular, the applicant alleged that France had failed to mitigate the risk of climate change-induced flooding in the municipality in which he formerly lived. The ECHR ruled that he could not claim to have victim status under Article 34 of the Convention and dismissed the case as he no longer lives in this municipality (or in France, for that matter).³

¹ See ESG Litigation in the Face of Climate Change – An Introduction from a European Corporate Perspective, https://www.nishimura.com/en/knowledge/newsletters/europe_230829.

² <https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases>.

³ *Carême v. France*, Application no. 7189/21, Press Release ECHR 088 (2024), 09.04.2024, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7919474-11026266%22%5D%7D>.

The case *Duarte Agostinho and Others v. Portugal and 32 Others*, a complaint by six young Portuguese nationals, was also dismissed by the ECHR. The applicants alleged that Portugal and the 32 other respondent states, Germany among them, were responsible for a range of climate-change impacts in Portugal such as extreme heat. However, the ECHR found that jurisdiction could not be established in relation to the respondent states other than Portugal and that the complaint against Portugal was also inadmissible for non-exhaustion of domestic remedies.⁴

2. The successful Swiss case and its importance

In the third case, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECHR found that Switzerland did in fact violate the Convention for failing to implement sufficient measures to mitigate climate change. The applicants, among them a Swiss association formed by more than 2,000 elderly women, claimed global warming, in particular heatwaves, to have negative effects on their living conditions and health.⁵ The case was not aimed at payment of damages.⁶ The ECHR acknowledged a “pressing urgency of climate change” and in light of this concludes that the Swiss legal framework setting out general objectives and targets to mitigate climate change while leaving concrete measures to achieve those objectives to be proposed to the Swiss Parliament “in good time” is insufficient. In particular, the ECHR criticizes the Swiss federal government for not quantifying the national greenhouse gas (“GHG”) emissions limitations through a carbon budget or otherwise.⁷

While the reasoning concerning the individual situation in Switzerland may be of importance mostly to the Swiss federal government, the ECHR made a number of general statements that are likely to be of broader importance:

At the end of a comprehensive examination of the results of scientific studies, national and international legal frameworks, case law and other reports and statements, the ECHR concludes that there are sufficiently reliable indications that:

- (i) man-made climate change exists,
- (ii) it poses a serious threat to human rights,

⁴ Duarte Agostinho and Others v. Portugal and 32 Others, Application no. 39371/20, Press Release ECHR 089 (2024), 09.04.2024, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7919494-11026295%22%7D>.

⁵ Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application no. 53600/20, Press Release ECHR 087 (2024), 09.04.2024, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7919428-11026177%22%7D> and Judgment, 09.04.2024, see in particular paras. 10, 521 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-233206%22%7D>.

⁶ ECHR Judgment, 09.04.2024, Application no. 53600/20, para. 647, *ibid*.

⁷ ECHR Judgment, 09.04.2024, Application no. 53600/20, paras. 565, 567 f., 573, *ibid*.

- (iii) states are aware of it and capable of taking measures to effectively address it,
- (iv) the relevant risks are likely lower if action is taken urgently, and
- (v) current global mitigation efforts are not sufficient.⁸

The ECHR also emphasizes that climate change cases present unprecedented difficulties. In particular, unlike in other environmental cases, there is no single definable source of harm. Instead, there are multiple sources for GHG emissions that have no regard for national borders and the ensuing consequences of its aggregation are the result of a complex chain of events. The ECHR concludes that measures and transformation processes must be comprehensive and cross-sectoral. Likewise, the ECHR considers the public sector to be just as responsible for climate change as the private sector, and that all individuals must play their part in mitigating its risks. Most importantly, no state should be able to evade its responsibility by pointing to the responsibility of other states.⁹

Regarding its own role, the ECHR emphasizes that determining measures must largely be left to democratic legislators. On the other hand, the ECHR notes that it is widely recognized that states have done far too little to date.¹⁰ The ECHR clarifies that states are obligated by the Convention to put in place the relevant legislative and administrative framework designed to provide effective protection of human health and life and to apply that framework effectively in practice. Even if it is ultimately up to the individual states to decide what measures to take, courts should nevertheless review whether all conflicting interests have been adequately taken into account and whether the states have acted with the necessary due diligence.¹¹

III. Implications and Outlook

What follows from the success of the Swiss association? Will anyone who is not satisfied with their government's climate protection measures be successful before the ECHR in the future? The clear answer: No. The other two ECHR cases already show that the path to the ECHR is open only in cases in which the national legal remedies have already been exhausted. Furthermore, a successful applicant will have to demonstrate how he or she is affected by the consequences of an allegedly inadequate climate protection measure. This high hurdle of individual exposure was also highlighted by the ECHR in the successful Swiss proceeding.¹²


⁸ ECHR Judgment, 09.04.2024, Application no. 53600/20, para. 436, *ibid.*

⁹ ECHR Judgment, 09.04.2024, Application no. 53600/20, paras. 414-419, 442, *ibid.*

¹⁰ ECHR Judgment, 09.04.2024, Application no. 53600/20, paras. 411-413, *ibid.*

¹¹ ECHR Judgment, 09.04.2024, Application no. 53600/20, para. 538; for details on judicial review see para. 550, *ibid.*

¹² ECHR Judgment, 09.04.2024, Application no. 53600/20, para. 487, *ibid.*



Nevertheless, the ECHR's ruling can be seen as a precedent with a signal effect, which could lead to an increase in climate proceedings against state governments in all instances at both national and European levels, albeit that there is some criticism towards the ECHR's ruling, for example by national government officials, alleging that it is overreaching and an interference by foreign judges. In particular, associations and environmental organizations are likely to be encouraged by the ruling as the ECHR has underlined their standing to bring actions.¹³

But will the ruling also help plaintiffs who are not targeting governments but companies or corporations with their climate lawsuits? One environmental protection organization certainly seems to think so, concluding its report on the ECHR proceedings with the remark that the ruling is also “groundbreaking” for its proceedings against a German car manufacturer.¹⁴ Whether this is the case remains to be seen. So far, climate lawsuits against companies in Germany have not been successful, apart from so-called “greenwashing” cases, i.e. those revolving around accusations of advertising with misleading statements about climate protection.¹⁵

For instance, at the end of 2023, shortly before the ECHR decision, two appeal proceedings by a different environmental protection organization against German car manufacturers were dismissed in Munich and Stuttgart. Both proceedings were aimed at forcing an early exit from the combustion engine business. However, both courts of appeal confirmed what the lower courts and other German courts had already established in comparable proceedings: It is up to the legislator to balance the conflicting interests of climate protection and commercial freedom. As the German legislator has adopted regulations for the transport sector that the courts currently consider to be constitutional, the defendant car manufacturers cannot be required to adopt stricter standards under civil law.¹⁶ Similarly, a key element of the ECHR decision is that even though society as a whole is ultimately responsible for climate protection, the processes enabling such protection essentially must come from democratic decision-making. The cases would therefore probably not have been decided differently if they had been issued after the ECHR ruling.


Overall, it is more likely that the ECHR decision will initially have an immediate impact only, or at least predominantly, in lawsuits against governments. However, this does not mean that companies will not feel its effects. As more and more strict regulations related to companies' commitments to sustainability, such as the Corporate

¹³ See Legal Tribune Online, <https://www.lto.de/recht/meinung/m/kommentar-klimasenioren-sieg-egmr/>; and The Economist, <https://www.economist.com/britain/2024/04/25/the-ecthrs-swiss-climate-ruling-overreach-or-appropriate>.

¹⁴ See Greenpeace, News Item from 09.04.2024, <https://www.greenpeace.de/klimaschutz/klimakrise/erfolg-klimasenioren>.

¹⁵ For details see our previous newsletter, footnote 1 above.

¹⁶ Higher Regional Court (*Oberlandesgericht – OLG*) Stuttgart, 08.11.2023 – 12 U 170/22, ESG 2023, 361; OLG Munich, 12.10.2023 – 32 U 936/23, ESG 2023, 370.



Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive, are being introduced, companies are already facing increasing pressure from climate related regulations and bureaucracy. However, the message from the ECHR is clear in that its judges consider the current global efforts as insufficient. Where governments may be forced to impose even stricter or more specific climate protection requirements in the future, companies will have to find ways to fulfill them.

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