European Court of Human Rights Issues Landmark Climate Change Decisions

On 9 April 2024, the European Court of Human Rights (the “Human Rights Court”) issued three decisions on the climate change obligations of states parties to the European Convention on Human Rights. Two of the complaints (Agostinhono v. Portugal and Carême v. France) were deemed to be inadmissible due to a failure to exhaust domestic remedies and a lack of victim standing, respectively, while a third case, Verein KlimaSeniorinnen Schweiz v. Switzerland (App No 53600/20), resulted in a judgment in favor of the claimants. Read together, the cases demonstrate that environmental litigation is now a reality in the domestic legal systems of Europe and in the Human Rights Court. Verein KlimaSeniorinnen Schweiz v. Switzerland, which is unique as an actio popularis case initiated by private persons on behalf of the general public, may pave a way for similar litigation in Europe seeking to establish positive obligations of states parties to the European Convention on Human Rights as it relates to climate change.

In Agostinhono v. Portugal and 32 Others (App No 39371/20), the Grand Chamber of the Human Rights Court found that the climate change claim was inadmissible due to the failure of the six young Portuguese claimants to exhaust domestic remedies for environmental matters in Portugal, including under its constitution. Having regard to the comprehensive system of remedies in the national legal system, the Human Rights Court noted that Portuguese case law demonstrated that environmental litigation was now a reality of the domestic legal system and that there was no reason for exempting the applicants from the requirement to exhaust available remedies under domestic law.

In Carême v. France (App No 7189/21), the Grand Chamber of the Human Rights Court decided that the climate change complaint by the former resident and mayor of the Grande Synthe municipality in France was inadmissible due to a lack of standing. The Court found that the applicant did not have status as a victim within the meaning of Article 34 of the European Convention on Human Rights. Though the applicant complained in his capacity as mayor of the Grande Synthe municipality in 2018, the Court found that the applicant no longer held victim status under Article 34 of the Convention as he no longer lives in Grande Synthe (or anywhere in France) and no longer has any sufficiently relevant nexus with Grande Synthe, irrespective of whether he is a French citizen or former resident.

* The authors wish to thank Harry Draper of Curtis London for his research assistance.
In contrast, a decision was issued in favor of the applicants in Verein KlimaSeniorinnen Schweiz v. Switzerland (App No 53600/20). The Human Rights Court held that there had been a violation of Article 8 of the European Convention on Human Rights with respect to the right to respect for private and family life and of Article 6.1 of the Convention with respect to access to the Court. The Court held that Article 8 of the Convention encompasses a right to effective protection by the state authorities from the adverse effects of climate change on lives, health, well-being and quality of life. The Court found that states have a positive obligation to undertake measures for substantially and progressively reducing their greenhouse gas ("GHG") emission levels with a view to reaching net neutrality within the next three decades. To avoid a disproportionate burden on future generations, states are obligated to take immediate action towards GHG reduction in binding national legislation. The Court found that the Swiss authorities failed to discharge this obligation through the development and implementation of relevant legislation.

These European cases are indicative of an uptick in environmental litigation brought against both states and corporate actors, with the UN Environmental Programme reporting that climate litigation against corporations, municipalities and states has more than doubled in the past five years.

About Curtis

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including multinational corporations and financial institutions, governments and state-owned companies, money managers, sovereign wealth funds, family-owned businesses, individuals and entrepreneurs.

For more information about Curtis, please visit www.curtis.com.

Attorney advertising. The material contained in this Client Alert is only a general review of the subjects covered and does not constitute legal advice. No legal or business decision should be based on its contents.
Please feel free to contact any of the persons listed below if you have any questions on this important development:

**John Balouziyeh**  
Partner  
jbalouziyeh@curtis.com  
New York: +1 212 696 6065

**Daniela Della Rosa**  
Partner  
ddellarosa@curtis.com  
Milan: +39 02 7623 2057

**Jason Wright**  
Partner  
jwright@curtis.com  
New York: +1 212 696 8833

**Michel Paradis**  
Partner  
mparadis@curtis.com  
New York: +1 212 696 6078