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Questions and Answers on the rulings in three cases concerning climate change:

- ***Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*** (application no. 53600/20)
- ***Carême v. France*** (no. 7189/21)
- ***Duarte Agostinho and Others v. Portugal and 32 Others*** (no. 39371/20)

Who are the applicants and what were their complaints?

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland concerns a complaint by four women and a Swiss association, Verein KlimaSeniorinnen Schweiz, whose members are all older women concerned about the consequences of global warming on their living conditions and health. They consider that the Swiss authorities are not taking sufficient action to mitigate the effects of climate change.

In *Duarte Agostinho and Others v. Portugal and 32 Others*, six young Portuguese nationals complain about the present and serious future effects of climate change. They believe that Portugal and the 32 other respondent states are responsible for this situation.

In *Carême v. France* the former resident and mayor of the Grande-Synthe municipality complains that France has taken insufficient steps to prevent climate change.

Who ruled on these cases?

The Chambers to which the cases had first been allocated relinquished jurisdiction in favour of the Grand Chamber. The Grand Chamber comprises 17 judges, including the President of the Court, the Vice-Presidents, the Presidents of the Sections and the national judge; the remaining judges are designated by drawing lots.

The three cases were all granted priority (under Rule 41 of the [Rules of the Court](#)) and while they were not joined, the hearings were staggered and they were all ruled on by the same composition of the Grand Chamber.

Why is the applicant's complaint inadmissible in *Carême v. France*?

The Court found that the former resident and mayor of Grande-Synthe did not have victim status under Article 34 of the Convention, as he no longer lives in Grande Synthe, nor for the time being in France, and no longer has any sufficiently relevant link with Grande Synthe.

In *Duarte Agostinho and Others v. Portugal and 32 Others*, why is the complaint against Portugal inadmissible?

The six young Portuguese nationals had not used the legal avenues available to them in Portugal to bring their complaints and had not, therefore, exhausted domestic remedies.

Why is the complaint against the other countries inadmissible in *Duarte Agostinho and Others v. Portugal and 32 Others*?

The Court found that there was no basis in the Convention to justify extending, by way of judicial interpretation, the extraterritorial jurisdiction of the other respondent States in the manner suggested by the applicants. In particular, the Court rejected the applicants' submissions to the effect that control over their Convention "interests" should serve as the relevant test for establishing jurisdiction in the field of climate change. The Court considers that this test would lead to a critical lack of foreseeability as regards the Convention's reach and an untenable level of uncertainty for the States. It would entail an unlimited expansion of the States' extraterritorial jurisdiction under the Convention and responsibilities thereunder towards people practically anywhere in the world.

Territorial jurisdiction was established with respect to Portugal only – no jurisdiction could be established with respect to the other States in this case.

Why are the individual applicant's complaints inadmissible in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*?

The four individual applicants did not fulfil the victim-status criteria under Article 34 (Individual applications) of the Convention.

In order to claim victim status in the context of complaints concerning climate change, individual applicants need to show that they are personally and directly affected by governmental action or inaction, as the Convention does not admit general public-interest complaints (*actio popularis*).

This depends on two key criteria: (a) high intensity of exposure of the applicant to the adverse effects of climate change, and (b) a pressing need to ensure the applicant's individual protection.

The Court carefully considered the nature and scope of the individual applicants' complaints and the material submitted by them, the degree of likelihood and/or probability of the adverse effects of climate change in time, the specific impact on each individual applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability.

It found that the four individual applicants did not fulfil the victim-status criteria.

What are *actio popularis*?

The term refers to actions taken to obtain a remedy by a person or a group in the name of the general public. Those persons or groups are neither themselves victims of a violation nor have they been authorised to represent any victims or potential victims. Such complaints are incompatible with the Convention system.

In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, why does the applicant association have the right (*locus standi*) to bring a complaint regarding the threats arising from climate change even though the individual applicants do not?

As climate change is an issue of common concern for humankind and there is a need to promote intergenerational burden-sharing, the Court found it was appropriate to allow recourse to legal action by associations in the context of climate change. Moreover, a greater allowance for recourse to legal action by associations is made in recognition of the fact that recourse to collective bodies may be the only accessible means to defend particular interests effectively in this context.

The right of an association to act on behalf of its members or other affected individuals within the jurisdiction concerned is not subject to a separate requirement that those on whose behalf the case has been brought would themselves meet the victim-status requirements for individuals.

The Court found that the applicant association fulfilled the relevant conditions (cf. next question) and had the necessary standing to act on behalf of its members in this case.

Would all associations have the right to bring such a complaint?

No, in order for an association to have the right to act on behalf of individuals and to lodge an application on account of the alleged failure of a State to take adequate measures to protect them from the harmful effects of climate change on their lives and health, it has to comply with several conditions:

- The association must be lawfully established in the jurisdiction concerned or with standing to act there.
- It must be able to demonstrate that its purpose is to defend the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change.
- It has to be able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

Does the Convention encompass a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life?

Inadequate State action to combat climate change exacerbates the risks of harmful consequences and subsequent threats for the enjoyment of human rights – threats already recognised by governments worldwide and confirmed by scientific knowledge. Having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals, the Court found that Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.

The Court, in its role as a judicial body tasked with the enforcement of human rights, has to ensure that the High Contracting Parties respect their engagements to the European Convention on Human Rights and its Protocols (Article 19 – Establishment of the Court). Measures designed to combat climate change and its adverse effects require legislative action both in terms of the policy framework and in various sectoral fields. Such action necessarily depends on democratic decision-making. The remit of national courts and this Court is complementary to those democratic processes.

Why is there a violation of Article 8 (right to respect for private and family life) in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*?

The Court found that Switzerland had failed to comply with its duties (“positive obligations”) under the Convention concerning climate change. The Swiss authorities had not acted in time and in an appropriate way to devise, develop and implement relevant legislation and measures to mitigate the effects of climate change in this case.

Why is there a violation of Article 6 § 1 (access to court) in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*?

The Court held that the applicant association’s legal action had been rejected – first by an administrative authority and then by the national courts at two levels of jurisdiction – on the basis of inadequate and insufficient considerations. There had been no other avenue available under national law to bring their complaints to a court.