



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Statement of 13 November 2020

Published 30 November 2020

FOURTH SECTION

Request No. 39371/20
Cláudia DUARTE AGOSTINHO and others
against Portugal and 33 other States
submitted 7 September 2020

PURPOSE OF THE CASE

The applicants are Portuguese citizens aged 21, 17, 8, 20, 15 and 12 years respectively (see the list of applicants and defendant States in the annex). They are represented before the Court by the London barrister, Marc Willers.

On 13 October 2020, the President of Section IV upheld the request of the applicants whereby the request should be urgently examined pursuant to Article 41 of the Court Regulations.

The case relates to greenhouse gas emissions emanating from 33 contracting States which would participate in global warming and manifesting themselves in heat waves which would impact the applicants' living conditions and health.

The applicants assert that the forest fires which Portugal has experienced each year for a number of years, and particularly since 2017, are the direct result of this global warming. The applicants allege being at risk of contracting health problems owing to these fires and having already experienced, following or during the forest fires, trouble sleeping, allergies and breathing difficulties all exacerbated by the very high temperatures during the hot season. During the forest fires, which sometimes occur several times a year, they have found it impossible to spend time outside, to play or practise a



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physical activity and schools have temporarily been closed. The fifth and sixth applicants highlight that climate change causes very powerful storms in winter and assert that their home, located in Lisbon, is very close to the sea and potentially in danger of suffering the ravages of such storms.

The applicants also claim that they feel anxious when faced with natural catastrophes such as forest fires, which have caused the death of more than one hundred people, which have already occurred in their neighbourhoods and which they have sometimes witnessed. Moreover, their anxiety is related to the perspective of living in a ever hotter climate throughout their lives which would impact on them and the families which they may have in the future.

The applicants are complaining about the non-compliance on behalf of these 33 States with their positive obligations pursuant to Articles 2 and 8 of the Agreement, read in the light of the commitments made within the context of the 2015 Paris Agreement on the climate (COP21). The applicants refer more specifically to the commitment mentioned in Article 2 of the Agreement, that is retaining the increase of the average temperature of the planet significantly below 2°C in comparison with pre-industrial levels and to pursue the action taken to limit temperature rise to 1.5°C in comparison with pre-industrial levels, it being understood that this would significantly reduce the risks and effects of climate change.

The applicants also allege a violation of Article 14 combined with Articles 2 and/or 8 of the Agreement, arguing that global warming affects their generation more specifically and that, given their ages, the mismanagement of some of their rights are more pronounced than those of the rights of preceding generations, given the deterioration in climate conditions which will continue over time.

Given the fact that four of the applicants are children, they assert that the aforementioned provisions of the Agreement must be read in the light of Article 3 (1) of the United Nations Agreement on the rights of children, which requires that any decision concerning them should be based on the primary consideration of the best interests of the child. They are also based on the principle of inter-generational equity featuring in several international instruments, including the 1992 Rio Declaration on the Environment and Development, the Preamble to the Paris Agreement and the 1992 United Nations Framework Agreement on climate change, according to which the right to development must be realised in such a way as it equitably satisfies the relative needs of development and the environment of present and future generations. They feel that there is no objective and reasonable justification for the burden of climate change to be placed on the younger generations owing to the adoption of inadequate measures to reduce global warming.

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The three first applicants also complain of the difficulty of continuing to cultivate vegetables in their vegetable garden and retrieve water from the well located on their family's property given the more and more frequent heat peaks. The recurrent forest fires during latter years have caused damage to their family's property, particularly owing to ash emissions.

The applicants consider that the Member States have not fulfilled the obligations incumbent on them pursuant to the provisions of the above-mentioned Agreement, particularly when read in the light of the international climate treaties. The latter charge the signatory States with the obligation of adopting measures to regulate their contributions to climate change in an appropriate way:

- a) by decreasing the emissions on their territory and on the other territories over which they have jurisdiction;
- b) by prohibiting the export of fossil fuels;
- c) by compensating for their emissions arising from the import of goods; and
- d) by limiting the release of emissions abroad.

These specific obligations exist even if the contributions of members States to global warming materialise outside their territory. Pursuant to these obligations, the States should implement concrete, effective measures whose evaluation lies in the analysis of the rate of reduction of emissions obtained through their implementation. In this case, given the overshooting of the global warming increase target fixed at an increase of 1.5°C, the applicants feel that the States' contribution to this excess is significant in such a way that the measures taken by the latter to reduce it must be presumed to be inadequate until proven to the contrary.

According to the applicants, the absence of appropriate measures to limit global emissions constitutes per se a violation of the States' obligations.

The applicants feel that the Member States share the presumed responsibility regarding climate change and that the uncertainty as to the "equitable share" of this contribution between the member States can only work in favour of the applicants.

They highlight the absolute urgency of acting in favour of the climate and feel that it is urgent in this context for the Court to recognise the shared responsibility of the States and to absolve the applicants of the obligation to exhaust the domestic remedies of each Member State. Faced with the Governments' inaction, the Court should advocate on behalf of the applicants and protect them from the threats weighing on them owing to climate change. Such an approach would respond to the demands of urgency to act with a view to complying with the 1.5°C target and would at the same time increase the probability of an efficient response from national jurisdictions. In this regard, the

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applicants assert that legal action has already been carried out by third parties in several Member States owing to the omission to comply with the binding obligations to reduce global emissions. Some of this action has terminated, others not, while other action is still pending before national jurisdictions.

Nevertheless, in a particularly complex case such as this, compelling the applicants, from modest families residing in Portugal, to exhaust the means of appeal before the national jurisdictions of each defendant State is equivalent to imposing upon them an excessive and disproportionate burden, while an efficient response from the jurisdictions of all the Members States appears necessary as the national jurisdictions can only issue injunctions with regard to their own States.

QUESTIONS TO THE PARTIES

1. Are the applicants subject to the jurisdiction of the defendant States within the meaning of Article 1 of the Agreement as the Court interprets it, given, among others, the commitments taken owing to the ratification of the signature of the 2015 Paris Agreement to reduce harmful emissions in order to contain global warming well below 2°C in comparison with pre-industrial levels and to pursue the action undertaken to limit the increase in temperature to 1.5°C?

More specifically, are the facts disclosed of a nature to engage the liability of the defendant States individually or collectively owing to their national policies and regulations or, as the case may be, European, referring to the measure to decrease the carbon footprint from their economies, including the fact of activities carried out abroad (see, for example, *Banković and others vs. Belgium and others* (Dec.) [GC], No. 52207/99, CEDH 2001-XII; *Ilaşcu and others vs. Moldova and Russia* [GC], No. 48787/99, CEDH 2004-VII; and *M.N. and others vs. Belgium* [GC] (Dec.), No. 3599/18, 5 May 2020)?

2. If so, can the applicants be considered to be current or potential victims of a violation of one of the rights of the Agreement invoked owing to the greenhouse gas emissions emanating from the 33 defendant States, in the meaning of Article 34 of the Agreement as interpreted by the Court?

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In particular, have the applicants suffered directly or indirectly and gravely the consequences of the alleged insufficient action or inaction by the defendant States to reach the above-mentioned target of 1.5°C (see, for example, *Caron and others vs. France* (Dec.), No. 48629/08, 29 June 2010; *Cordella and others vs. Italy*, Nos. 54414/13 and 54264/15, 24 January 2019; and *Aly Bernard and others and Greenpeace – Luxembourg vs. Luxembourg* (Dec.), No. 29197/95, 29 June 1999)

3. In the case of an affirmative answer to question No. 2, is there a violation in this case of Articles 2, 3 and 8 of the Agreement, taken in isolation and combined with Article 14, as well as Article 1 of Protocol No. 1 of the Agreement?

In particular, given their margin of discretion in the environmental sector, have the defendant States performed the obligations incumbent upon them pursuant to the provisions of the afore-mentioned Agreement, read in the light of the pertinent provisions and principles, such as the principles of precaution and intergenerational equity, contained in international environmental law, including in the international treaties to which they are a Party, specifically:

- by adopting an appropriate regulation and in applying it by means of adequate measures sufficient to achieve the objective of containing the temperature increase at 1.5°C (see, for example, *Tătar vs. Romania*, No. 67021/01, §§ 109 and 120, 27 January 2009, and *Greenpeace E.V. and others vs. Germany* (Dec.), No. 18215/06, 19 May 2009); and

- in basing their regulations relative to climate change mitigation on appropriate enquiries and studies, ensuring effective public participation, as provided for in the 1998 Aarhus Agreement on access to information, public participation in decision-making and access to justice in relation to the environment (see, for example, *Tătar vs. Romania*, No. 67021/01, § 118, 27 January 2009)?

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ANNEX 1 - The applicants

No	First name SURNAME	Year Birth	of	Nationality	Venue of Residence
1	Cláudia DUARTE AGOSTINHO	1999		Portuguese	Pombal
2	Martim DUARTE AGOSTINHO	2003.		Portuguese	Urbanização Quinta do Seixal 2400-703 Leiria
3	Mariana DUARTE AGOSTINHO	2012		Portuguese	Pombal
4	Catarina DOS SANTOS MOTA	2000		Portuguese	Pombal
5	Sofia DOS SANTOS OLIVEIRA	2005		Portuguese	Sobreda
6	André DOS SANTOS OLIVEIRA	2008		Portuguese	Sobreda

ANNEX II - Defendant States

- | | |
|------------------------------|------------------------|
| 1. Austria | 18. Italy |
| 2. Belgium | 19. Lithuania |
| 3. Bulgaria | 20. Luxembourg |
| 4. Switzerland | 21. Latvia |
| 5. Cyprus | 22. Malta |
| 6. Czech Republic | 23. The Netherlands |
| 7. Germany | 24. Norway |
| 8. Denmark | 25. Poland |
| 9. Spain | 26. Portugal |
| 10. Estonia | 27. Romania |
| 11. Finland | 28. Russian Federation |
| 12. France | 29. Slovakia |
| 13. Location: United Kingdom | 30. Slovenia |
| 14. Greece | 31. Sweden |
| 15. Croatia | 32. Turkey |
| 16. Hungary | 33. Ukraine |
| 17. Ireland | |