



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

Communicated on November 13, 2020

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FOURTH SECTION

Request n^o 39371/20
Cláudia DUARTE AGOSTINHO and others
against Portugal and 32 other states introduced
on September 7, 2020

SUBJECT OF THE CASE

The applicants are Portuguese nationals aged 21, 17, 8, 20, 15 and 12 years old respectively (see the list of applicants and respondent states in the annex). They are represented before the Court by Mr Marc Willers, lawyer in London.

On October 13, 2020, the President of Section IV granted the applicants' request that the application be examined as a matter of priority under Article 41 of the Rules of Court.

The case concerns greenhouse gas emissions from 33 Contracting States which are said to be contributing to global warming and manifested, among other things, by heat peaks which would impact the living conditions and health of the applicants.

The applicants claim that the forest fires that Portugal has experienced every year for several years, in particular since 2017, are the direct result of this global warming. The applicants allege that they are at risk of contracting health problems as a result of these fires and having already had, following or during forest fires, sleep disturbances, allergies, breathing difficulties, all of which were exacerbated by the very high temperatures. high during the hot season. During the forest fires that sometimes occurred several times a year, they were unable to spend time outdoors, playing or practicing a game.

physical activity, and schools were temporarily closed. The fifth and sixth applicants stress that climate change causes very powerful storms in winter and claim that their house, located in Lisbon, is very close to the sea and potentially in danger of suffering the ravages of such storms.

The applicants also state that they are anxious about natural disasters such as forest fires which have caused the death of more than a hundred people, which have already occurred in their neighborhood and which they have sometimes seen. Their anxiety is, moreover, linked to the prospect of living in an increasingly hot climate throughout their lives, which would impact them, and the families they could found in the future.

The applicants complain about the non-compliance by these 33 States with their positive obligations under Articles 2 and 8 of the Convention, read in the light of the commitments made under the 2015 Paris Climate Agreement (COP21). They refer more specifically to the commitment referred to in Article 2 of the Agreement, namely to contain the rise in the average temperature of the planet to significantly below 2 °C compared to pre-industrial levels and continue the action taken to limit the rise in temperature to 1.5 °C compared to pre-industrial levels, with the understanding that this would significantly reduce the risks and effects of climate change.

The applicants also allege a violation of Article 14 taken in conjunction with Articles 2 and / or 8 of the Convention, arguing that global warming affects their generation more particularly and that, given their age, the interference with their rights is more severe. pronounced than those in the rights of previous generations, in view of the deterioration of climatic conditions which will continue over time.

In view of the fact that four applicants are children, they argue that the aforementioned provisions of the Convention must be read in the light of Article 3 (1) of the United Nations Convention on the Rights of the Child which requires that any decision affecting them be based on the overriding consideration of the best interests of the child. They are also based on the principle of intergenerational equity contained in several international instruments, including the Rio Declaration of 1992 on Environment and Development, the Preamble to the Paris Agreement and the United Nations Framework Convention on climate change

1992, that the right to development must be realized in a way that equitably meets the developmental and environmental needs of present and future generations. They believe that there is no objective and reasonable justification for placing the burden of climate change on the younger generations as a result of the adoption of inadequate heat reduction measures.

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The first three applicants also complain of the difficulty, in view of the increasing drought peaks, of continuing to grow vegetables in their vegetable garden and to extract water from the well on their family's property. . Recurrent forest fires in recent years have caused damage to their family's property, in particular because of ash emissions.

The applicants consider that the Member States have not fulfilled their obligations under the above-mentioned provisions of the Convention, read in particular in the light of international climate treaties. The latter place on the signatory states the obligation to adopt measures to adequately regulate their contributions to climate change:

- a) by reducing emissions on their territory and on other territories over which they have jurisdiction;
 - b) banning the export of fossil fuels;
 - c) offsetting their emissions resulting from the importation of goods;
- and
- d) by limiting the rejection of programs abroad.

These precise obligations exist even as member states' contributions to global warming materialize outside their territory. By virtue of these obligations, States must put in place concrete and effective measures, the evaluation of which is based on the analysis of the rate of reduction of emissions obtained by the implementation of these. In this case, in view of the exceeding of the target for increasing warming, set at 1.5 ° C increase, the applicants consider that the contribution of States to this excess is significant, so that the measures taken by the latter to reduce it must be presumed inadequate until proven guilty.

The absence of adequate measures to limit global emissions constitutes, in itself, according to the applicants, a violation of the obligations incumbent on States.

The applicants consider that the Member States share the presumed responsibility for climate change and that the uncertainty as to the "fair sharing" of this contribution between the Member States can only work in favor of the applicants.

They underline the absolute urgency to act in favor of the climate and consider that it is urgent in this context that the Court recognize the shared responsibility of the States and absolve the applicants from the obligation to exhaust the domestic remedies in each State. member. Faced with the inaction of Governments, the Court should defend the applicants and protect them from the threats weighing on them as a result of climate change. Such an approach would meet the urgent need to act in order to meet the target of 1.5 ° C and at the same time increase the likelihood of an effective response from national courts. In this regard, the

Applicants argue that legal actions have already been taken by third parties in several Member States for failure to comply with binding obligations to reduce global emissions. Some of these actions have been successful, others have not, while others are still pending before national courts.

However, in a particularly complex case such as this, to oblige the applicants, from modest families and residing in Portugal, to exhaust the means of redress before the national courts of each respondent State, would amount to imposing an excessive and disproportionate burden on them. , while an effective response from the courts of all the Member States appears necessary, since national courts can only issue injunctions in respect of their own States.

QUESTIONS TO THE PARTIES

1. Do the applicants fall within the jurisdiction of the respondent States in meaning of Article 1 of the Convention as interpreted by the Court, taking into account, among other things, the commitments made as a result of the ratification or signature of the 2015 Paris Agreement to reduce polluting emissions in order to contain global warming well below 2 °C compared to pre-industrial levels and to continue the action taken to limit the temperature rise to 1.5 °C VS ?

More specifically, are the facts denounced such as to engage the responsibility of the respondent States taken individually or collectively because of their national or, as the case may be, European policies and regulations, aimed at measures to reduce the carbon footprint of their economies including as a result of activities carried out abroad (see, for example, *Banković and others v. Belgium and others* (dec.) [GC], n° 52207/99, ECHR 2001-XII; *Ilaşcu and others v. Moldova and Russia* [GC], n° 48787/99, ECHR 2004-VII; and *MN and others v. Belgium* [GC] (dec.), N° 3599/18, May 5, 2020)?

2. If so, can the applicants be regarded as actual or potential victims, within the meaning of Article 34 of the Convention as interpreted by the Court, of a violation of one of the rights of the Convention invoked in the present case on account of the emissions of greenhouse gases. greenhouse from the 33 respondent states?

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In particular, did the Applicants directly or indirectly and seriously suffer the consequences of the alleged insufficient or inaction of the Respondent States to achieve the target of 1.5? ° C above mentioned (see, for example, *Caron and others v. France* (dec.), n ° 48629/08, June 29, 2010; *Cordella and others v. Italy*, not bone 54414/13 and 54264/15, January 24, 2019; and *Aly Bernard and others and Greenpeace - Luxembourg v. Luxembourg* (dec.), n ° 29197/95, June 29, 1999)

3. If the answer to question n is yes ° 2, has there been a violation in the present case, Articles 2, 3 and 8 of the Convention, taken alone and in conjunction with Article 14, as well as Article 1 of Protocol no. ° 1 to the Convention?

In particular, having regard to their margin of appreciation in the field of the environment, have the respondent States fulfilled their obligations under the provisions of the Convention invoked, read in the light of the relevant provisions and principles? , such as the principles of precaution and intergenerational equity, contained in international environmental law, including in international treaties to which they are Parties, in particular:

- by adopting appropriate regulations and applying them by means of adequate and sufficient measures to achieve the objective of containing the rise in temperature to 1.5 ° C (see, for example, *Tatar*

vs. Romania, not ° 67021/01, §§ 109 and 120, January 27, 2009, and *Greenpeace EV and others v. Germany* (dec.), n ° 18215/06, May 19, 2009); and

- by basing their climate change mitigation regulations on appropriate surveys and studies ensuring effective public participation, as provided for in the Aarhus Convention of 1998 on Access to Information, Public Participation decision-making and access to justice in environmental matters (see, for example, *Tătar v. Romania*, not ° 67021/01, § 118, January 27

2009)?

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APPENDIX I - The applicants

NOT.º	Firstname name	Year birth	nationality	Location of residence
1	Cláudia DUARTE AGOSTINHO	1999	Portugese	Pombal
2	Martim DUARTE AGOSTINHO	2003	Portugese	Urbanização Quinta do Seixal 2400-703 Leiria
3	Mariana DUARTE AGOSTINHO	2012	Portugese	Pombal
4	Catarina DOS SANTOS MOTA	2000	Portugese	Pombal
5	Sofia DOS SANTOS OLIVEIRA	2005	Portugese	Sobreda
6	André DOS SANTOS OLIVEIRA	2008	Portugese	Sobreda

ANNEX II - Respondent States

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