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

Press Release
issued by the Registrar of the Court

ECHR 089 (2024)
09.04.2024

The Court has declared inadmissible the applications lodged against Portugal and 32 other States on the issue of climate change

In its decision in the case of Duarte Agostinho and Others v. Portugal and 32 Others (application no. 39371/20), the European Court of Human Rights has unanimously declared the application inadmissible.

The applicants, six young Portuguese nationals, complained of the existing, and serious future, impacts of climate change. They submitted that Portugal was already experiencing a range of climate-change impacts, including increases in mean temperatures and extreme heat, which was a major driver of wildfires. They relied on various Convention Articles, international instruments such as the 2015 Paris Agreement and the UN Convention on the Rights of the Child, and general reports and expert findings concerning the harm caused by climate change.

In the applicants' view, Portugal and the 32 other respondent States bore responsibility for the situation in issue. They submitted that they were currently exposed to a risk of harm from climate change, and that the risk was set to increase significantly over the course of their lifetimes. They argued that their generation was particularly affected by climate change and that, given their ages, the interference with their rights was more marked than in the case of previous generations.

As concerned the extraterritorial jurisdiction of the respondent States other than Portugal, the Court found that there were no grounds in the Convention for the extension, by way of judicial interpretation, of their extraterritorial jurisdiction in the manner requested by the applicants.

It followed that territorial jurisdiction was established in respect of Portugal, whereas no jurisdiction could be established as regards the other respondent States. The applicants' complaint against the other respondent States had therefore to be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

Having regard to the fact that the applicants had not pursued any legal avenue in Portugal concerning their complaints, the applicants' complaint against Portugal was also inadmissible for non-exhaustion of domestic remedies.

The decision is final.

For further information, please see these Questions and Answers on the three Grand Chamber cases concerning climate change.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are six Portuguese nationals who were born between 1999 and 2012 and live in the municipalities of Pombal and Almada. On 7 September 2020 they lodged an application with the Court against the Portuguese Republic and the 32 other States listed at the end of this press release[1].

The applicants relied on the most recent reports of the Intergovernmental Panel on Climate Change (IPCC) and some other scientific reports, showing that the level of climate change to date was unsafe and that rapid and deep emissions reductions by 2030 were needed in order to achieve the agreed 1.5°C temperature increase limit. They alleged that the respondent States had been aware of the dangers of climate change since the adoption in 1992 of the UN Framework Convention on Climate

Change (UNFCCC) and the adoption of the Paris Agreement, and submitted that action was required by each respondent State. The applicants argued that Portugal was one of the European countries that would be most affected by the adverse impact of climate change and that it faced "hard limits" to its ability to adapt to the impact of global warming.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 September 2020.

On 28 June 2022 the Chamber to which the application had been assigned relinquished jurisdiction in favour of the Grand Chamber.

The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the same composition of the Grand Chamber as that in the cases of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20) and *Carême v. France* (application no. 7189/21), which had also been relinquished. On 18 November 2022 the applicants informed the Court that they wished to withdraw their application in so far as it concerned Ukraine owing to circumstances relating to the war.

The third-party interveners listed at the end of this press release[2], who had been given leave to intervene in the written procedure, submitted their observations to the Court.

A hearing took place in public in the Human Rights Building, Strasbourg, on 27 September 2023.

Relying, in particular, on Articles 2 (right to life). 3 (prohibition of inhuman and degrading treatment), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention, the applicants complained about the existing, and serious future, impacts of climate change imputable to the respondent States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes.

The decision was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Darian **Pavli** (Albania),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Ana Maria **Guerra Martins** (Portugal),
Mattias **Guyomar** (France),
Andreas **Zünd** (Switzerland),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Jurisdiction

All of the applicants were residents of Portugal, and were thus under its territorial jurisdiction, which meant that under Article 1 of the Convention, Portugal had to answer for any infringement attributable to it of the rights and freedoms protected by the Convention.

The applicants invoked a number of "exceptional circumstances" and "special features" in support of their argument that the Court should establish the other respondent States' extraterritorial jurisdiction over the applicants within the specific context of climate change.

The Court acknowledged the following aspects of climate change put forward by the applicants.

First, States had ultimate control over public and private activities based on their territories that produced greenhouse gas (GHG) emissions. In this connection, they had undertaken certain international-law commitments, notably those set out in the Paris Agreement, which they had developed in their domestic laws and policy documents as well as in their Nationally Determined Contributions under the Paris Agreement. Secondly, the Court acknowledged that, albeit complex and multi-layered, there was a certain causal relationship between public and private activities based on a State's territory that produced GHG emissions and the adverse impact on the rights and well-being of people residing outside the borders of that State. Thirdly, the problem of climate change was of a truly existential nature for humankind, in a way that set it apart from other cause-and-effect situations.

However, it found that these considerations could not in themselves serve as a basis for creating by way of judicial interpretation a novel ground for extraterritorial jurisdiction or as justification for expanding on the existing ones.

The Court proceeded to address the other arguments put forward by the applicants as a basis for justifying an extension of extraterritorial jurisdiction.

First, the applicants argued that jurisdiction should depend on the content of the positive obligations which they sought for the Court to impose on States given the gravity of the impact of climate change on their Convention rights. The Court did not find it possible to consider that the proposed positive obligations of States in the field of climate change could be a sufficient ground for holding that the State had jurisdiction over individuals outside its territory or otherwise outside its authority and control.

Moreover, the fact that through their Portuguese nationality the applicants also had EU citizenship could not serve to establish a jurisdictional link between them and the 26 respondent States that were also EU member States. Such a position, which misconstrued the nature and effect of EU citizenship, would be tantamount to requiring the State to satisfy substantive obligations under the Convention despite the fact that it did not have control, within the meaning of the Court's case-law, over either the territory where the applicants were suffering the alleged impacts of climate change, or the applicants themselves.

Secondly, the applicants submitted that the Court should establish extraterritorial jurisdiction so as to facilitate broader litigation relating to climate change and to allow them to act instead of "appropriate applicants from each State [bringing] comparably ambitious applications". In that connection, the Court specified that the Convention was not designed to provide general protection of the environment as such, and that other international instruments and domestic legislation were specifically adapted to dealing with that particular matter. Accepting such an argument would entail a radical departure from the rationale of the Convention protection system, which was primarily and fundamentally based on the principles of territorial jurisdiction and subsidiarity. The applicants also argued that bringing a case against Portugal alone would have been of limited efficacy and that they had had no other means of holding the respondent States accountable for the impact of climate

change on their Convention rights. The Court reiterated, however, that jurisdiction should be differentiated from the issue of responsibility, which constituted a separate matter to be examined, if appropriate, in relation to the merits of the complaint. While it accepted that climate change was undoubtedly a global phenomenon which should be addressed at the global level by the community of States, it noted that each State had its own share of responsibilities to take measures to tackle climate change and that the taking of those measures was not determined by any specific action (or omission) of any other State.

Lastly, as concerned the criterion of "control over the applicants' Convention interests", on which the applicants also relied, according to the Court's established case-law, extraterritorial jurisdiction as conceived under Article 1 of the Convention required control over the person himself or herself rather than the person's interests as such. In particular, reliance on control over the person's interests as a criterion for establishing a State's extraterritorial jurisdiction would lead to a critical lack of foreseeability of the Convention's reach.

In sum, extending the Contracting Parties' extraterritorial jurisdiction on the basis of the proposed criterion of "control over the applicants' Convention interests" in the field of climate change – be it within or outside the Convention's legal space – would lead to an untenable level of uncertainty for the States. Accepting the applicants' arguments would entail an unlimited expansion of States' extraterritorial jurisdiction under the Convention and responsibilities under the Convention towards people practically anywhere in the world. This would turn the Convention into a global climate-change treaty. The Court found no support in the Convention for an extension of its scope in the manner requested by the applicants.

In view of the above considerations, while also mindful of the constant legal developments at national and international level and global responses to climate change, together with the ever-increasing scientific knowledge about climate change and its effects on individuals, the Court found that there were no grounds in the Convention for the extension, by way of judicial interpretation, of the respondent States' extraterritorial jurisdiction in the manner requested by the applicants.

It followed from the above that territorial jurisdiction was established in respect of Portugal, whereas no jurisdiction could be established as regards the other respondent States. The applicants' complaint against the other respondent States had therefore to be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

Exhaustion of domestic remedies

It was uncontested that the applicants had not pursued any legal avenue in Portugal concerning their complaints.

However, the Court noted that there was not only an explicit Constitutional recognition of the right to a healthy and ecologically balanced environment (Article 66), but that this Constitutional provision was directly applicable and enforceable by the domestic courts. The Portuguese legal system also provided for a possibility of instituting *actio popularis* actions through which the claimant could request the adoption by public authorities of certain conduct regarding, *inter alia*, the protection of the environment and quality of life.

In that context, it had to be noted that section 7(1) of Law no. 19/2014 (the Environmental Policy Framework) guaranteed to everyone the right to a full and effective protection of their rights and interests in environmental matters and that section 7(2) also provided for a possibility of instituting an *actio popularis*. Moreover, the Climate Law recognised climate change as an emergency situation and provided to everyone the right of defence against the impact of climate change as well as the ability to demand that public and private entities comply with the duties and obligations to which they were bound in climate matters.

Moreover, the domestic law provided for a non-contractual civil liability action against the State by which compensation could be obtained for harm or damages caused by unlawful action or inaction by the State. The Portuguese legal system also provided for administrative remedies whereby administrative courts could be asked to compel the administration to adopt measures regarding, *inter alia*, the environment and quality of life.

Having regard to the comprehensive system of remedies in the national legal order, the Court noted that the domestic case-law demonstrated that environmental litigation was now a reality of the domestic legal system.

Finally, the Court noted that the Portuguese legal system provided for both the mechanisms to overcome parties' lack of means for legal representation and effective remedies for the excessive length of proceedings. According to the Court's well-established case-law, the existence of mere doubts as to the prospects of success of a particular remedy which was not obviously futile was not a valid reason for failing to exhaust that avenue of redress.

In view of the above and having regard to the circumstances of the case as a whole, the Court was unable to consider that there were any special reasons for exempting the applicants from the requirement to exhaust domestic remedies in accordance with the applicable rules and the available procedures under domestic law. Had the applicants complied with this requirement, that would have given the domestic courts the opportunity which the rule of exhaustion of domestic remedies was designed to afford States, namely to determine the issue of compatibility of the impugned national measures, or omissions, with the Convention and, should the applicants have subsequently pursued their complaints before the Court, it would have had the benefit of the factual and legal findings and the assessment of the national courts. Thus, the applicants had failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, the role of the Court being subsidiary to theirs.

Lastly, the Court found it difficult to accept the applicants' vision of subsidiarity according to which the Court should rule on the issue of climate change before the opportunity had been given to the respondent States' courts to do so. This stood in sharp contrast to the principle of subsidiarity underpinning the Convention system as a whole, and, most specifically, the rule of exhaustion of domestic remedies. The Court was not a court of first instance; it did not have the capacity, nor was it appropriate to its function as an international court, to adjudicate on large numbers of cases which required the finding of basic facts which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions.

It therefore followed that the applicants' complaint against Portugal was inadmissible for non-exhaustion of domestic remedies and had to be rejected.

Victim status

The Court noted that there was a significant lack of clarity as concerned the applicants' individual situations, which made it difficult to examine whether they satisfied the victim-status criteria (*Verein KlimaSeniorinnen Schweiz and Others*, delivered on the same day, §§ 487-88). This lack of clarity could be explained, in particular, by the applicants' failure to comply with the obligation to exhaust domestic remedies, a condition of admissibility closely linked to the question of victim status, particularly in the case of general measures such as those related to climate change.

The decision is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

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[1] The Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Swiss Confederation, the Republic of Cyprus, the Czech Republic, the Federal Republic of Germany, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Estonia, the Republic of Finland, the French Republic , the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic , the Republic of Croatia, Hungary, Ireland, the Italian Republic, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Latvia, the Republic of Malta, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Türkiye and Ukraine.

[2] The Council of Europe Commissioner for Human Rights, the European Commission, the United Nations Special Rapporteurs on human rights and the environment, and on toxics and human rights, the European Network of National Human Rights Institutions ("ENNHRI"), Save the Children International, Climate Action Network Europe ("CAN-E"), the Extraterritorial Obligations Consortium and partners, Center for International Environmental Law, Greenpeace International and the Union of Concerned Scientists, the International Network for Economic, Social and Cultural Rights (ESCR-Net), ALL-YOUTH research project and Tampere University Public Law Research Group, Professor Christel Cournil and Notre Affaire à Tous ("NAAT"), and Our Children's Trust ("OCT"), Oxfam International and its affiliates (Oxfam), the Centre for Climate Repair at the University of Cambridge and the Centre for Child Law at the University of Pretoria.