

CommHR(2023)29

Hearing of the Grand Chamber of the European Court of Human Rights in the case of *Duarte Agostinho and Others v. Portugal and 32 Others*

Oral submission by Dunja Mijatović

Council of Europe Commissioner for Human Rights

27 September 2023

Madam President, Distinguished members of the Court,

I decided to intervene in this case concerning climate change because of its special importance for the protection of human rights and the environment, a priority of my mandate.

There is no doubt that climate change is a planetary threat to human rights and human existence. Its negative impacts are already clearly visible now, at just 1 degree Celsius of global warming, and as the world continues to warm, human rights will suffer even more.

Human health is intimately [linked](#) to the state of the natural environment. Climate change-related environmental degradation has a devastating impact on the enjoyment of human rights for all of us. But in particular, on children and young people such as the applicants in this case. It affects their physical and mental health, their civil, political, and social rights, as well as their dignity. It is therefore crucial to adopt a child rights based approach to the question of climate change and how it affects their human rights.

My first point today is this. The science is clear: children are particularly vulnerable to the consequences of climate change. Its effects may impair their physical development, and intensify diseases, including allergies highly prevalent in children, like asthma. Rising heat and air pollution means less time spent outdoors, infringing on children's human right to education, to play and to engage in recreational activities.

It is clear that the effects of climate change will confine many children, including the applicants in this case, to a life of hardship. They will spend a longer share of their lives under much more adverse weather conditions. They will also carry a heavier burden of mitigation and adaptation measures, quite literally paying the price of inadequate climate action.

Also, as I have [found](#) in my work, young people often have limited possibilities to change this course of events. Opportunities to participate in political decision-making on environmental matters are rare for them, and many of them are not yet able to vote. The resulting sentiment of frustration and powerlessness leads many to embrace [public protest](#) and direct action. However, I have also seen how their legitimate concerns and demands are increasingly being repressed, criminalised, and stigmatised in many places around Europe.

All this has a tremendous impact on young people's mental health, as more and more of them experience existential fears and climate anxiety. Their concern is understandable. Their future life in a healthy climate is what is at stake. And it is increasingly apparent that, without immediate action, this kind of future will not come.

This leads me to my second point, which is about justice.

It is crucial that young people affected by climate change are heard and have access to justice. In a few member states, climate litigation has led courts to recognise that climate change results in human rights violations. This is positive. But victims of human rights violations caused by climate change face many barriers to accessing justice at home effectively.

This is because courts and other remedies at the domestic level often tend to act in isolation, focusing on the national context. They assess the impact of national climate action instruments and policies on their own populations, often disregarding their effect on people living elsewhere. Domestic courts also often hold states accountable to only the absolute minimum of their climate change commitments. Here, again, climate science is clear: if all states are allowed to do only the bare minimum, the global climate change goals will not be met.

Climate change is a transnational problem that requires coherent, transnational solutions. It is therefore encouraging to see that victims seek and find the protection of human rights institutions – including, increasingly often, this Court. But as long as there is no authoritative, pan-European case-law that would define the human rights obligations of states in relation to climate change, the level of protection offered by domestic courts will vary and applicants from various member states will risk unequal and unfair treatment.

And a third, final point I wish to make today:

Since I filed my [written observations](#), there has been a game-changing development: the right to a clean, healthy and sustainable environment has been recognised as a universal human right by the Human Rights Council, and by the UN General Assembly in a resolution passed in July 2022.

All member states of the Council of Europe supported this landmark resolution. And, last year, the Council of Europe Committee of Ministers called on all member states to actively consider recognising this right at the national level. I note that the majority of them have already recognised various forms of this right in their domestic legal systems.

To me, these are clear signs that we have to move forward and step up our efforts to protect the human right to a clean, healthy, and sustainable environment in a manner that is practical and effective. It is the member states' obligation to act adequately and with speed to protect human rights that are in imminent danger from the climate catastrophe.

Time is of the essence. Climate change is outpacing governments' climate action.

The Glasgow Climate Pact [adopted](#) in 2021 stressed the urgency of enhancing climate ambition and action “in this critical decade”. And the UN Secretary-General has put forward his [Climate Action Acceleration Agenda](#), which I fully support.

For millions of young people in Europe and around the world, preventing irreparable damage to life on Earth is today the number one human rights issue.

Determination must be found to tackle this issue head-on. This and other climate change related applications provide the Court with a unique opportunity to continue to forge the legal path towards a more complete implementation of the Convention. It is also an opportunity for this Court to provide an appropriate legal forum to address these existential human rights questions.

I believe that the Convention, interpreted as a “living instrument” by this Court on countless occasions, provides a solid legal framework to ensure real-life protection to victims of human rights violations resulting from environmental degradation and climate change.

I hope that my comments will be helpful to the Court. Thank you.