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CLUJ COURT OF APPEAL
Third Administrative and Fiscal Division
PANEL D14
Case file no. 114 / 33 / 2023
Ruling: **6 June 2023**

Your Honor,

The first - sixth line claimants Indicated in the contentious administrative proceedings, with address for service at Revnic, Cristian & Asociații partnership of lawyers in Cluj-Napoca, str. Pavel Roșca , nr. 1, ap. 7, Cluj County,

Through Ms. **Roxana Mândruțiu** and Ms. **Isabela Porcius**, attorneys-at-law, whose powers of attorney has been filed,

hereby submit the following

Closing arguments

Whereby we intend to highlight the following issues:

1. The way in which claims have been brought allows the judgment to be enforced. The European Court of Human Rights judgment in Saffi.
2. The requirement to reach the climate target set by the Paris Agreement is both an expression of collective effort and the individual responsibility of each State.
3. Both national courts and the European Court of Human Rights can impose more ambitious climate change measures on States. The International Court of Justice only issues an advisory opinion, which is merely a guideline for national courts.

I. The way in which claims have been brought allows the judgment to be enforced. The European Court of Human Rights case law in Saffi v. Italy

(1) We have requested, by means of **claims 1 and 2** of the procedure opened at the mentioned court, that the defendants be ordered to achieve the following objectives:

- The reduction of greenhouse gas emissions by at least 55% compared to 1990 levels;
- The increase of renewable ambition by at least 45% and energy efficiency by 13%.

(2) In order to achieve these goals, defendants may and must take any measures they deem necessary.

(3) In other words, the first two claims aim to compel the defendants to achieve clear, precise targets. Such minimum targets would enable our country to stay close to the trajectory of limiting global warming to 1.5 degrees Celsius, as individually undertaken in the Paris Agreement.

(4) By means of the **third claim**, we have requested that the defendants be ordered within 30 days after the judgment has become final to:

- The adoption of concrete and coherent plans including the obligations indicated in claims 1 and 2: the obligation to reduce greenhouse gas emissions by at least 55% compared to 1990 levels and to increase the integration of renewables by 45% and energy efficiency by 13% ;
- The implementation of annual reporting mechanisms;
- The implementation of mechanisms to track progress **towards meeting the targets indicated in claims 1 and 2.**

(5) According to Article 24 of Law no. 554/2004, should the public authority not proceed with the voluntary enforcement of the administrative court decision, compulsory execution shall be carried out in accordance with the provisions of the same law.

(6) In ***Saffi v. Italy, the European Court of Human Rights*** has recalled that (6) In Saffi v. Italy, the European Court of Human Rights has clarified that *"the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party"* (paragraph 63). Such conclusions were echoed in Șandor v. Romania (paragraph 23) and Ruianu v. Romania (paragraph 65). Therefore, as stated in Article 24 of Law no. 554/2004, the public authority does not have a privileged position, whether at local, county or national level, but must carry out the measures ordered by the court decision.

(7) Moreover, in the same case of ***Saffi v. Italy, the European Court of Human Rights*** held that *"the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question"* (paragraph 49).

(8) Paragraph 49 is essential, given that the State's wide margin of discretion as to how to enforce the judgment does not mean that it is impossible to enforce it. In the Saffi case, the question was

to ensure a balance between, on the one hand, the general interest in avoiding social tensions caused by the simultaneous eviction of a significant number of tenants and, on the other hand, the property rights of the individuals renting the dwellings. On the other hand, in our application, the claimants' private interest is outweighed by the public interest and there is no conflict between them. Addressing the issue of climate change not only safeguards the rights and freedoms of the claimants, but benefits society as a whole.

9) Accordingly, as a result of the manner in which the claims are submitted, the requests of the Saffi case

- for not restricting the possibility for state bodies to establish the means (concrete measures and plans) of implementation for achieving the objective of the specified quotas, as well as
- not restricting the possibility for state bodies to establish mechanisms for verifying (through reporting and monitoring) the consequences of such implementation, i.e. verifying the feasibility of the measures and plans adopted.

are complied with.

(10) The targets set out in the claims are clear objectives to be met by the defendants, as national authorities, with a view to complying with their EU and international climate change commitments. Concrete measures and plans to achieve such targets, as well as mechanisms to monitor progress, remain at the discretion of the defendants.

(11) In another European Court of Human Rights case concerning the protection of property title, namely the issuance of land deeds by the competent authority, Dorneanu v. Romania, the European Court of Human Rights held that "the right of access to a court cannot compel a State to order the enforcement of every civil judgment" (paragraph 33), but "if the administration fails or refuses to comply or is late in doing so, the safeguards provided for in Article 6 which the litigant enjoyed during the judicial phase of the proceedings lose all their justification" (paragraph 33). All the more so in the present dispute, which is not a civil matter but an administrative litigation, where individuals injured by public authorities are involved, the administration must comply with the judgment in an appropriate and immediate manner so as not to jeopardise the fundamental right to a fair trial.

(12) **To conclude,** should the application be upheld, the defendants would be required not only to adopt concrete plans to reduce greenhouse gas emissions by at least 55% below 1990 levels and to increase the ambition on renewables by at least 45%, but also **annual progress reporting mechanisms.** Under these circumstances, the fulfilment of the obligations by the defendants can be monitored by the undersigned, and in the event of failure to comply voluntarily, we will be able to refer the matter to the court of enforcement under Article 24 of Law no. 554.

II. The obligation to reach the climate goal set under the Paris Agreement is both an expression of collective effort and the individual responsibility of each State.

(1) The Paris Agreement is a bottom-up document, which sets out in Article 2 a common objective for all signatory countries: a long-term temperature reduction of 1.5 degrees Celsius and 2 degrees Celsius respectively, but which imposes under Article 4 the individual responsibility of each country to establish its own Nationally Determined Contributions (NDCs). NDCs must be compatible with the long-term temperature limit, otherwise they are illegal.

(2) Consequently, the court can censor the defendants' commitments and compel them to undertake higher ambitions should they fail to achieve the purpose for which they have been regulated.

(3) As can be seen from all the scientific reports appended to this application, the NDCs undertaken by the defendants are insufficient and are not capable of leading to compliance with the commitment made in the Paris Agreement.

(4) Although the case-law in other legal systems is not binding on the trial judge, we believe that it is a starting point for interpreting the obligations undertaken by the signatory States under the Paris Agreement and the legal consequences of non-compliance.

(5) In the judicial practice of various European countries, as well as on other continents, it has been acknowledged that, in addition to the collective effort that must be made, the States also bear an individual responsibility for taking measures to address the disastrous effects of climate change.

(6) In this respect we refer

- ***to Urgenda v. the Netherlands***, where the Supreme Court of the Netherlands ruled that "the Netherlands is under an obligation to do its part to prevent dangerous climatic phenomena, albeit this is a global problem" (paragraph 5.7.1. of the Decision of the Supreme Court of the Netherlands - to be found at pages 155-189 in Volume I of the present case file). The Court recalls the no-harm rule existing in international law, which implies that States should not harm each other and that each State is responsible for its part (paragraph 5.7.5.). Moreover, it is emphasised that, given the serious consequences of climate change, the argument that a State should not take responsibility because other States do not fulfil their share of responsibility cannot be accepted (paragraph 5.7.7.). Nor can the argument that emission reductions within a State's national territory are of no global significance be accepted (paragraph 5.7.7.). Should these arguments of the defence be upheld, then the State in question could evade its share of responsibility by pointing out the situation in other countries or by indicating its own small share (para. 5.7.7). Instead, by dismissing such defences, each State can be called upon to respond effectively,

which increases the chances of all States making an effective contribution (paragraph 5.7.7.). Therefore, in the matter submitted for trial, it is not important to consider the extent to which other states are active or passive in the fight against climate change, but it must be borne in mind that Romania's current ambitions are lower and that they cannot ensure that our country actually complies with its share of responsibility. Implementing the highest possible ambition standard in the field of climate change requires increasing Romania's ambitions in the sector of greenhouse gas reduction, renewables and energy efficiency and the adoption by the defendants, as central public authorities, of all necessary measures and concrete and coherent plans to reach this vital goal both for our country and for the whole world.

- ***Neubauer et. al. v. Germany***[1], wherein the Federal Constitutional Court held that Article 2 of the Paris Agreement " requires the State to provide protection by taking measures which contribute to limiting anthropogenic global warming and associated climate change" (paragraph 149). Furthermore, the State's "inability to stop climate change on its own and its dependence on international involvement as a result of the global impact of climate change and the global nature of its causes does not, in principle, preclude the possibility of an obligation of protection arising from fundamental rights" (paragraph 149). In the same case, it was also held that "where climate change cannot be prevented or has already occurred" (paragraph 150) there is an obligation on the State "to address the risks by implementing positive measures designed to mitigate the consequences of climate change" (paragraph 150), since such measures are also necessary "to keep the risks posed by the actual effects of climate change to levels that are tolerable under constitutional law" (paragraph 150). We are already in a critical point where the effects of climate change are being severely felt. As a consequence, the Romanian authorities, namely the defendants, must not be trapped in taking the relevant measures and plans by the belief that Romania will not be able to stop the global phenomenon of climate change through its own efforts, but must take an interest in the situation of its citizens, both in the present and future generations, and in the protection of their fundamental and constitutional rights. As it has been pointed out in the application, serious concerns are being raised about the disregard for the right to life itself, the right to health protection, the right to a healthy and ecologically balanced environment, the right to a future in keeping with human dignity, the right to private and family life and even the ownership rights.

[1] https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html;jsessionid=7E0AE141488AABECE985C62E75057E84.internet011

- ***The Shrestha case***[2], where the Supreme Court of Nepal ruled that the State's failure to enact a comprehensive climate change law and to adequately address the existing impacts of climate change was in violation of the right to life and the right to live with dignity, as well as the right to a healthy environment (page 5). Once again, the question arises as to the failure of state authorities, such as the defendants in the present litigation, to properly fulfil their obligations deriving from the state's individual responsibility to combat the effects of climate change, a failure which must be remedied by the intervention of the courts so as to establish a successful trajectory for the State in this area.

- ***The Future Generations case***[3], where the Supreme Court of Colombia highlighted that a healthy environment is a prerequisite for ensuring respect for the rights to life, health and the right to minimum subsistence, which belong to both current and future generations. However, by failing to take all the necessary measures and by failing to implement plans to achieve minimum quotas, such as those sought in the claims, the defendants, as central public authorities, are failing to take account of the importance of the fundamental rights of the citizens whom they represent and for whose benefit they should act. The case in Colombia concerned primarily the issue of deforestation, but, as is apparent from the application in these proceedings, massive deforestation in Romania is, unfortunately, only one facet of the whole range of causes of the destructive effects of climate change.

- ***PSB and Others v. Brazil***[4], where the Supreme Court of Brazil made it clear that "there are no human rights on a dead or diseased planet" and that a State's actions or omissions are incompatible with the duty to "protect and restore the environment" and the duty to protect fundamental human rights (paragraphs 17, 20, 30, 36). Therefore, should the States, as in the case of Romania, continue to be reluctant to take appropriate measures

[2] http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2018/20181225_074-WO-0283_judgment-2.pdf

[3] https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/

[4] http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2022/20220701_ADPF-708_decision-1.pdf

and plans, by virtue of their individual responsibility, there will soon no longer be an object of the protection that should be ensured by such plans and measures.

III. Both national courts and the European Court of Human Rights can force States to adopt more ambitious climate change measures. The International Court of Justice only issues an advisory opinion, which is merely a guideline for national courts.

(1) The first step in the judicial resolution of climate change issues is the analysis and adjudication of the situation by the national courts, as the undersigned has in fact done.

(2) The national judge, as the first European judge, has jurisdiction for analysing the compatibility of the defendants' commitments with the long-term temperature limit. This is because exceeding the critical threshold has substantial consequences for human rights, and these cannot possibly exist on a dead or sick planet, as recalled by the Supreme Court of Brazil in the case of ***PSB and Others v. Brazil (concerning the Climate Fund) [2022]***[5].

(3) It is only after domestic review procedures have been exhausted that interested parties may apply to the European Court of Human Rights under Article 35 of the European Convention on Human Rights, otherwise the application is inadmissible.

(4) According to an ECHR[6] press release, three cases concerning climate change are pending before the Grand Chamber, namely:

- ***Verein Klimaseniorinnen Schweiz and Others v. Switzerland*** - This case, which was brought by a group of elderly people concerned about the consequences of global warming on their living conditions and health, concerns a complaint about the failures of the Swiss authorities in the area of climate protection. In addition, they pointed out that, in relation to their application to the national courts, they did not benefit from respect for the right to a fair trial enshrined in Article 6 of the Convention nor from respect for the right to an effective remedy enshrined in Article 13 of the Convention.
- ***Carême v France*** - This case concerns a complaint brought by a resident and former mayor of the commune of Grande-Synthe, alleging that France has failed to take sufficient measures to prevent climate change and that such failure entails a violation of the right to life (Article 2 of the Convention) and the right to respect for private and family life (Article 8 of the Convention).

[5] http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2022/20220701_ADPF-708_decision-1.pdf

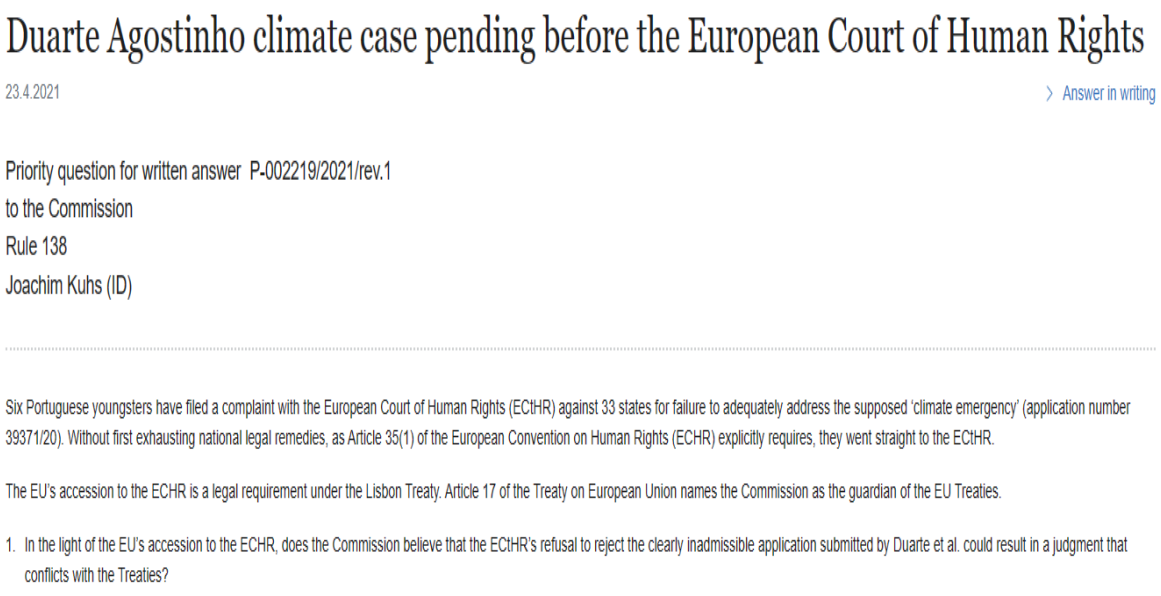
[6] https://www.echr.coe.int/Documents/FS_Climate_change_ENG.pdf

- ***Duarte Agostinho and Others v. Portugal and 32 other States (including Romania)*** - This case is unprecedented in that it did not follow the natural course, since the claimants applied directly to the European Court of Human Rights. The European Parliament, through its member Joachim Kuhs, raised the issue of non-compliance with the requirement under Article 35 of the Convention in that the claimants did not apply to the national courts, which makes the case manifestly inadmissible[7]. The President of the European Commission[8] pointed out that the European Court of Human Rights had not yet ruled on the admissibility of application no. 39371/20 Duarte Agostinho and Others v Portugal and Others, **but had merged the matter of admissibility with the merits of the case.**

  Accordingly, the Court will have to carefully consider whether an exemption to the exhaustion of domestic review procedures rule applies. As a matter of principle, claimants must refer their applications to all national courts to enable them to address their complaints. Under certain circumstances, claimants may be exempted from this requirement, for instance where this would be unreasonable or would entail a disproportionate burden. In reviewing this case, the Court could consider - as the European Court of Auditors did in Sacchi and others, dismissing the case precisely for non-exhaustion of domestic review procedures - whether and to what extent, if at all, the claimants would have been able to pursue remedies in Portugal and the other 32 States.

[7] https://www.europarl.europa.eu/doceo/document/P-9-2021-002219_EN.html

[8] https://www.europarl.europa.eu/doceo/document/P-9-2021-002219-ASW_EN.html



Duarte Agostinho climate case pending before the European Court of Human Rights

23.4.2021 › Answer in writing

Priority question for written answer P-002219/2021/rev.1
to the Commission
Rule 138
Joachim Kuhs (ID)

Six Portuguese youngsters have filed a complaint with the European Court of Human Rights (ECtHR) against 33 states for failure to adequately address the supposed 'climate emergency' (application number 39371/20). Without first exhausting national legal remedies, as Article 35(1) of the European Convention on Human Rights (ECHR) explicitly requires, they went straight to the ECtHR.

The EU's accession to the ECHR is a legal requirement under the Lisbon Treaty. Article 17 of the Treaty on European Union names the Commission as the guardian of the EU Treaties.

1. In the light of the EU's accession to the ECHR, does the Commission believe that the ECtHR's refusal to reject the clearly inadmissible application submitted by Duarte et al. could result in a judgment that conflicts with the Treaties?

(5) Rule is that claimants only apply to the European Court of Human Rights should their applications to the national courts be dismissed. When such a condition is not met, as in the case of Duarte Agostinho (which is understandable, however, because the application is brought against 33 states), the matter of the inadmissibility of the application automatically arises.

(6) As for **the jurisdiction of the International Court of Justice (ICJ)** in climate change matters, we are only discussing the possibility of the ICJ issuing an advisory opinion which provides guidelines for national courts. Thus, following the resolution adopted by the General Assembly of the United Nations in 2023 at the 77th session of the Assembly, which requested the ICJ's advisory opinion on States' climate change obligations, on 20 April 2023, the President of the International Court of Justice[9] set the procedural deadlines for the issuance of the advisory opinion, while retaining jurisdiction in the matter:

> *"The United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. In accordance with Article 66, paragraph 2, of its Statute, the President fixes **20 October 2023** as the time-limit within which written statements on the questions may be presented to the Court, and **22 January 2024** as the time-limit within which States and organizations having presented written statements may submit written comments on the*

[9] https://www.icj-cij.org/sites/default/files/case-related/187/187-20230425-PRE-01-00-EN.pdf

written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute."

Accordingly, in the light of all the considerations set out in the action initiating proceedings and this summary of pleas of illegality, written pleadings and these closing arguments, you are requested to grant the application as submitted.

THE DECLIC ASSOCIATION,

Through Ms. Roxana Mândruțiu, Attorney-at-law.

and Ms. Isabela Porcius, Attorney-at-law.