

Climate Politics Disguised as Human Rights at "The European Climate Change Court"

**Legal, political and economic issues of climate change
litigation before the European Court of Human Rights**



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Summary

The Duarte case in brief

In the Duarte case, six Portuguese minors complain to the European Court of Human Rights (ECtHR) about the violation of their "right to life and family life" by 33 countries that they consider to have adopted inadequate climate policies.

They formulate a number of requirements, including (1) a reduction in greenhouse gas emissions, (2) drastic restrictions on the export of fossil fuels, (3) drastic measures to compensate for emissions associated with the import of products and (4) measures to force internationally operating companies to limit the emissions of their entire production chain.

In all these areas, emissions must be reduced to zero to meet the "climate emergency". On the basis of a favourable judgement from the ECtHR, they are then able to litigate further at national level against countries that do not try hard enough to achieve these goals. The countries complained against will have no choice but to comply with the Court's ruling, as no appeal is possible.

Enormous consequences for the economy and democracy

The earning capacity of the entire economic system is at stake, as the costs for companies and countries to meet the requirements will be sky-high. Such a ruling would bring the economy in many countries to its knees, with all the consequences that that entails.

In addition to the economic impact, which is difficult to overestimate, the implications for democracy and the rule of law are also enormous. By ruling in favour of the plaintiffs, climate policy will be permanently removed from the regular process of political decision-making, where elected representatives and administrators can weigh up the various interests against each other, assess policy and make the relevant corrections and adjustments as needed.

Partisan, biased and activist

It appears very likely that the Portuguese minors, who are in fact pawns pushed forward by climate activist organisations, will actually win this case. Based on several actions and rulings, the judges of the ECtHR have displayed a particular bias, which can safely be called partisan.

- **Firstly**, this indictment should have been dismissed immediately on account of it completely bypassing the national judicial process. Although this is normally a standard requirement for proceedings before the ECtHR, this case was even given special preferential treatment due to it being deemed a matter of "urgency".
- **Secondly**, the ECtHR has, on its own initiative, extended the complaint brought by the under-age complainants to include "torture".

According to the Court, pursuing an "inadequate climate policy" can apparently lend itself to being equated with torture or inhumane treatment.

- **Thirdly**, judges involved in the case have already made public rulings on the “undeniable existence of a climate emergency” that requires urgent action, with the President of the Court also referring to the ECtHR as the “European Court of Climate Change” in a speech. He also spoke some encouraging words about the chance of success of “climate justice”, which can be understood as an open invitation for climate activists to enlist the help of the Court in their endeavour to impose their dream climate policy on Europe and the rest of the world.
- **Fourthly**, the ECtHR has rejected an extensively substantiated request for intervention from concerned MEPs without providing reasons for this decision. The same fate befell a group with expertise in constitutional law, as well as an organisation that is critical of climate policy and its scientific basis. However, interventions were allowed by organisations that are clearly sympathetic to the complainants in this case.

This case is thus in line with a trend that has been going on for some time, in which the judges of the ECtHR are making use of political activism that poses a direct threat to the separation of powers. A fair hearing at the European Court of Human Rights is not guaranteed.

Human rights as a pretext

The Duarte case illustrates how climate activists have found an ally in partisan judges with whom they share an ideological affinity. Under the guise of human rights, climate policy is being reduced to an irreversible judicial dictate, over which no democratic control is possible. Judicial authorities that dictate policy to democratically elected governments are not applying laws but, rather, making them themselves. The judges concerned do not even bother to hide their bias.

Conclusion

The rule of law and the separation of powers must be restored. It is unacceptable for a human rights treaty to be abused by judges for the purpose of imposing climate policy on the countries of Europe in a coercive manner. Decision-making that should take place in the political arena is being held hostage, undermining the whole democratic governance model and eroding citizens' confidence in governance. The ECtHR has become a partisan institution that actively pursues politics without having any mandate to do so. Let the ECtHR go back to basics as a protector of human rights, not as an institution that undermines democracy, politics and the rule of law.