

By Registered Mail

The Registrar
European Court of Human Rights
(for the attention of the President)
Council of Europe
F-67075 Strasbourg Cedex

Amsterdam, 23 August 2021

**UREGENT AND IMPORTANT -- In re: Application no. 39371/20 Cláudia DUARTE
AGOSTINHO and others against Portugal and 32 other states – REQUEST FOR LEAVE TO
INTERVENE AS THIRD PARTY**

Dear Mr. President,

Pursuant to Article 36(2) of the Convention and Rule 44, CLINTEL and Marcel Crok, founder of CLINTEL and science communicator (in his personal capacity), herewith requests leave to intervene as third party intervenors in the proceedings in relation to Application no. 39371/20 Cláudia DUARTE AGOSTINHO and others against Portugal and 32 other states.

CLINTEL, but not Marcel Crok, previously submitted a detailed request for leave to intervene in this case. A copy of this prior request is attached hereto as [Annex 1](#), and insofar as necessary, incorporated herein by reference.

You rejected CLINTEL's prior request without stating any reasons, merely referencing the standard of "the proper administration of justice" set forth in the Convention. While CLINTEL believes that you erred, this renewed, further request is submitted on the grounds of important new scientific information and an urgent need for correcting the record before the Court in the DUARTE case. Our sole objective is to ensure that the Court has a sound understanding of the science relevant to the issues before it makes any decisions.

1. New scientific information – there is no 'climate crisis' nor any 'climate emergency'

The applicants in the DUARTE case have suggested to the Court that there is a "climate emergency." In addition, the President of the ECtHR and the Vice-President of the section that handles the DUARTE case, have not only publicly declared that there is a "climate emergency," they have also stated that "no one can legitimately deny that there is a climate emergency."

The evidence submitted by the DUARTE applicants and the statement by the ECtHR's judges quoted above are incorrect and misleading. We highlight two recent developments in this regard:

- Recently, the IPCC issued its latest Assessment Report (AR6). The report does not employ the term “climate crisis” or “climate emergency,” except in passing in relation to terminology used in the public media.
- Likewise, the European Commission has recently confirmed that the term “climate crisis” is not a scientific concept, but a political slogan. As the Commission put it (see [Annex 5](#) attached hereto), “[t]he term ‘climate emergency’ expresses the political will to fulfil the obligations under the Paris Agreement.”
- The World Climate Declaration, which confirms that there is no climate emergency, which had been endorsed by over 900 scientists and other thinkers from 37 countries, has recently been signed by Professor William Happer, Princeton University, a voice of reason in the climate debate. A copy of the World Climate Declaration is attached to this request as [Annex 4](#). CLINTEL and/or Marcel Crok are able to provide persuasive scientific evidence for each of the statements in this declaration.

CLINTEL and/or Marcel Crok wish to submit evidence to the Court to demonstrate that the best available science does not and cannot employ the term “climate crisis” or “climate emergency.”

2. New scientific information – RCP8.5 is unlikely

The DUARTE applicants submitted to the Court a report prepared by a consultancy firm called “Climate Analytics.” This report serves as a critical piece of evidence to demonstrate that the extreme weather events about which the DUARTE applicants complain, are caused by climate change. The Climate Analytics report, to a very substantial degree, relies on research based on the RCP8.5 scenario to justify its conclusions.

There now is new information showing that RCP8.5 is an unlikely, implausible scenario, and cannot be used for decision making of any kind. In its recent AR6, the IPCC has confirmed this, stating that the likelihood of this scenario is low.

CLINTEL and Marcel Crok wish to submit evidence to the Court demonstrating that the Climate Analytics report and the RCP8.5 scenario on which it is based, are biased, unreliable, and this report should not be relied on by the Court.

3. New scientific information – attribution science is fatally flawed

There is another, even more fundamental problem with the Climate Analytics report which the DUARTE applicants have submitted to the Court to show that climate change has caused the extreme weather events about which the DUARTE applicants complain.

The Climate Analytics’ analysis is based on so-called “attribution science,” which, as research has shown, has been specifically developed for use in climate change litigation. There now is persuasive evidence, however, that the entire area of attribution science suffers from fatal flaws. Please refer to the article by professor Ross McKittrick attached to this request as [Annex 2](#), and the statements by Professor McKittrick, Professor Judith Curry, and Professor Tol set forth in [Annex 3](#). Professors McKittrick, Curry, and Tol are

experts in their fields and extremely well positioned to opine on the statistical issues raised by attribution science.

CLINTEL and Marcel Crok wish to submit evidence to the Court demonstrating that the Climate Analytics report is unsound and unreliable due to the extensive use of attribution science.

4. Climate science before the Court

The Court's judges have already demonstrated that they lack any understanding of science, and are wholly unable to distinguish between scientific and non-scientific information. This is further aggravated by the misleading information submitted by the DUARTE applicants, which merely reinforces the prejudice of the ECtHR's judges.

Indeed, statements made by the judges of this Court raise serious concerns. In a public speech, Judge Eicke did not rely on any scientific publications for his understanding of the state of the climate, but he took his cues from Sir David Attenborough, a well-known biologist and climate alarmist. Sir David has been proven utterly wrong on prior occasions.

CLINTEL and Marcel Crok wish to educate the Court on climate science, the limits of our knowledge about the climate, the outstanding scientific issues that have not been resolved, and the relevance thereof for decision making in relation to climate policy.

5. CLINTEL's submission

To provide meaningful input, CLINTEL requests that the President grant leave to submit a brief of a length adequate to develop these issues. Of course, CLINTEL will attempt to keep its submission as brief as possible, and refer to sources for further reading as much as possible.

CLINTEL is willing to commit to meeting any deadline the Court imposes.

6. Equality, equality of arms

In support of this request, CLINTEL and Marcel Crok draw the Court's attention to the fact the European Commission was granted leave to intervene in the DUARTE case even though it submitted its request after the deadline had expired and even though there was no new information.

CLINTEL and Marcel Crok are entitled to equal treatment, and emphasize that, unlike the Commission, they will base their intervention on new information that was not available by the time the deadline expired.

We also observe that the parties that have been allowed by the Court to intervene in the case are human rights and climate action organizations; no scientific input whatsoever is available to the Court. CLINTEL and Marcel Crok can help the Court understand the scientific issues and the limits of climate science.

7. Additional Request

The evidence that CLINTEL and Marcel Crok intend to submit to the Court is extremely important and critical to the outcome of the DUARTE case. If this evidence is considered with an open mind, it will completely change the judges' thinking about the case and the claims made by the DUARTE applicants.

It is critically important that the information set forth in this request is made available as soon as possible to the judges and the parties in the DUARTE case; any misunderstandings should be corrected as early as possible in the decision making process, since it is much harder to correct them once judges and parties have formed ideas and opinions.

We therefore request that the President, before making a decision on this request, make copies available to the judges and all parties in the case. In light of the urgency and importance of this matter, we will also make this request publicly available through CLINTEL's website at www.clintel.org

8. Climate science is on trial before the Court

To conclude, we wish to emphasize that the Court is not in a position to say "we do not judge the science, we judge only the policy." The claims made by the applicants in the DUARTE case hinge critically on the existence of the alleged "climate crisis" and the causal relation between emissions in the states concerned and heat waves and drought in Portugal – if there is no "climate crisis" in a scientific sense and no causal relations between emissions and the heat waves and drought in Portugal exist, the claims fail and must be dismissed.

The key factual issues in this case are scientific issues and, by entertaining the application, the Court has given itself no choice but to engage these issues so that it is able to make an informed judgment based on the best available science. If the Court proceeds on the basis that "no one can legitimately deny that there is a climate emergency," as its President and Vice-President have said, and accepts the allegations of the DUARTE applicants without scrutinizing the science behind them, the Court not only makes a mockery of justice, but also further politicizes climate science and hinders legislatures in making climate policy based on the best available science, to the detriment of mankind.

The Court should not want to do so. We will help you understand the science.

Respectfully submitted,

On behalf of CLINTEL,

On behalf of Marcel Crok,

Marcel Crok, founder

Marcel Crok, science communicator

Annex 1. Prior request

See attachment.

Annex 2. Article by Professor Ross McKittrick

See attachment.

Annex 3. Statements by Professors Mc Kitrick, Professor Judith Curry, and Professor Tol regarding McKitrick article

Professor Ross McKitrick, 18 Aug 2021: “I have published a new paper in Climate Dynamics critiquing the Optimal Fingerprinting methodology relied upon by the IPCC and others for 20 years to attribute climate change to GHGs.”

Professor Ross McKitrick, 21 Aug 2021: “The chatter among critics of my paper in a nutshell. Put up a front of dismissal and ridicule but, among themselves, nervously admit that it’s way over their heads and hope it doesn’t matter. Alas it matters.”

Professor Judith Curry, 18 Aug 2021: “Hugely important new paper by Ross McKitrick. The IPCC’s attribution methodology is fundamentally flawed.”

Professor Richard Tol, 20 Aug 2021 : “Another literature that is entirely wrong; biased estimates, meaningless tests.”

Professor Richard Tol, 21 Aug 2021: “Allen & Tett introduced an FGLS estimator that is wrong and a test to show that they’re right when they’re not. They clearly put an effort into the paper, but did not read the statistical literature on the matter or walk over to the statistics or econometrics department at Oxford. The problem that Allen & Tett tried and failed to solve in 1999 had been solved by Halbert White in 1980 and was textbook material in the early 1990s.”

Annex 4. World Climate Declaration

There is no climate emergency

Climate science should be less political, while climate policies should be more scientific. Scientists should openly address uncertainties and exaggerations in their predictions of global warming, while politicians should dispassionately count the real costs as well as the imagined benefits of their policy measures

Natural as well as anthropogenic factors cause warming

The geological archive reveals that Earth's climate has varied as long as the planet has existed, with natural cold and warm phases. The Little Ice Age ended as recently as 1850. Therefore, it is no surprise that we now are experiencing a period of warming.

Warming is far slower than predicted

The world has warmed significantly less than predicted by IPCC on the basis of modeled anthropogenic forcing. The gap between the real world and the modeled world tells us that we are far from understanding climate change.

Climate policy relies on inadequate models

Climate models have many shortcomings and are not remotely plausible as policy tools. They do not only exaggerate the effect of greenhouse gases, they also ignore the fact that enriching the atmosphere with CO₂ is beneficial.

CO₂ is plant food, the basis of all life on Earth

CO₂ is not a pollutant. It is essential to all life on Earth. More CO₂ is favorable for nature, greening our planet. Additional CO₂ in the air has promoted growth in global plant biomass. It is also profitable for agriculture, increasing the yields of crops worldwide.

Global warming has not increased natural disasters

There is no statistical evidence that global warming is intensifying hurricanes, floods, droughts and suchlike natural disasters, or making them more frequent. However, there is ample evidence that CO₂ - mitigation measures are as damaging as they are costly. Climate policy must respect scientific and economic realities. There is no climate emergency. Therefore, there is no cause for panic and alarm. We strongly oppose the harmful and unrealistic net-zero CO₂ policy proposed for 2050. Go for adaptation instead of mitigation; adaptation works whatever the causes are.

OUR ADVICE TO THE EUROPEAN LEADERS IS THAT SCIENCE SHOULD STRIVE FOR A SIGNIFICANTLY BETTER UNDERSTANDING OF THE CLIMATE SYSTEM, WHILE POLITICS SHOULD FOCUS ON MINIMIZING POTENTIAL CLIMATE DAMAGE BY PRIORITIZING ADAPTATION STRATEGIES BASED ON PROVEN AND AFFORDABLE TECHNOLOGIES.

Annex 5. Written Questions and Answers from the European Commission regarding the DUARTE climate case pending before the European Court of Human Rights

Priority question for written answer P-002200/2021/rev.1 to the Commission, dated 22 April 2021, from Rob Rooker (ECR), Subject: Duarte Agostinho climate case pending before the European Court of Human Rights

Six young people from Portugal have filed a complaint with the European Court of Human Rights (ECtHR) against 33 states (application number 39371/20) for failure to adequately address the supposed 'climate emergency'. The ECtHR is now considering imposing a series of draconian climate measures on these states, which would overrule their democratic policy decisions and destroy their economies.

We understand from press reports that the 33 states concerned are required by the ECtHR to submit their responses to the complaint by 27 May 2021. In the light of this upcoming deadline, we would request that the Commission answer the following questions no later than 17 May 2021:

1. Is the Commission aware of this case? If so, does it believe that it has the authority to intervene and does it intend to do so?
2. If it does choose to intervene, will it make it clear that the 'climate emergency' invoked by Duarte et al. is a political concept and not one based on science?
3. How will it seek to defend EU climate policymaking from interference or a possible takeover by the ECtHR?

Answer given by President von der Leyen on behalf of the European Commission (7.7.2021)

1. The Commission is aware of the Duarte Agostinho case pending before the European Court of Human Rights (ECHR). Following consultations in the Council, the Commission requested on 25 March 2021 to be granted leave to intervene on behalf of the Union as an 'other person concerned' pursuant to Article 36(2) of the European Convention on Human Rights and Rule 44(3) of the Rules of Court. In a letter of 7 April 2021, the ECHR notified the Commission that it was granted leave to intervene and allowed to present written observations before the Court. The Commission submitted its written observations on 19 May 2021.
2. The Commission bases its defence of EU policy in the field of environmental protection on sound legal reasoning and science-based evidence. The term 'climate emergency' expresses the political will to fulfil the obligations under the Paris Agreement.
3. The Commission defends the level of ambition of the EU in tackling climate change by reducing net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels and reaching the climate-neutrality objective by 2050, in line with the updated Nationally Determined Contribution submitted by the EU on 17 December 2020. To achieve these goals, the Commission will also soon propose a comprehensive 'fit for 55' legislative package.