

By Registered Mail

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

In re: Request 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 herewith requests leave to intervene as third party intervenor in the proceedings in relation to Request no. 39371/20 Cláudia DUARTE AGOSTINHO and others against Portugal and 32 other states. Below, we provide the reasons for our request, and describe the nature of our proposed intervention.

- About CLINTEL

Clintel stands for Climate Intelligence. CLINTEL is an independent foundation that operates in the fields of climate change and climate policy. CLINTEL was founded in 2019 by emeritus professor of geophysics Guus Berkhout and science journalist Marcel Crok. CLINTEL's main objective is to generate knowledge and understanding of the causes and effects of climate change as well as the effects of climate policy. Further information about CLINTEL can be found at: <https://clintel.org/about-us/>

CLINTEL has access to a network of experts in climate science, other areas of science, climate policy experts and lawyers who support the cause of promoting science-based climate policy-making.

CLINTEL wishes to intervene during the stage of the assessment of the admissibility of Application no. 39371/20 because it believes that the proceedings should be informed by an accurate and balanced explanation of the state of climate science and climate policy-making as it relates to the facts asserted by the Applicants in this case. This information is relevant to the questions posed by the Court to the parties in this case.

- Proposed Intervention

Below, we briefly describe where we can provide information and analysis relevant to the Court's decision on admissibility. To this end, we have copied the questions posed by the Court and inserted our comments in blue:

"1. Do the applicants come within the jurisdiction of the respondent States within the meaning of Article 1 of the Convention as interpreted by the Court, taking into account, inter alia, the undertakings entered into as a result of the ratification or signature of the 2015 Paris Agreement to reduce pollutant emissions in order to contain global warming well below 2°C compared to pre-industrial levels and to continue the action taken to limit the temperature rise to 1.5°C?"

CLINTEL: The question posed by the Court are not merely legal questions, but depend critically on assumptions about causal links or correlations between anthropogenic greenhouse gas emissions, temperature increase, climate change, and extreme weather events. CLINTEL would provide input on these relations. Further, the question posed by the Court refer to the temperature goals set forth in the

Paris Agreement on Climate Change. CLINTEL would comment on the nature of these goals, their relation with science, policy and politics, and what they mean for the obligations of states that have ratified the Paris Agreement.

“More specifically, are the facts denounced such as to engage the responsibility of the respondent States taken individually or collectively because of their national or, as the case may be, European policies and regulations, aimed at measures to reduce the carbon footprint of their economies, including as a result of activities carried out abroad (see, for example, *Banković and Others v. Belgium and Others (dec.)* [GC], No. 52207/99, ECHR 2001 XII; *Ilașcu and Others v. Moldova and Russia* [GC], no 48787/99, ECHR 2004 VII; and *MN and others v. Belgium* [GC] (dec.), No 3599/18, 5 May 2020)?”

CLINTEL: The questions posed by the Court raise scientific and policy issues in relation to the responsibility of states for climate change. Likewise, the concept of the ‘carbon footprint’ requires careful analysis to understand its relation with global warming, climate change, and extreme weather events. CLINTEL would provide science-based analysis of these issues.

“2. If so, can the applicants be considered as actual or potential victims, within the meaning of Article 34 of the Convention as interpreted by the Court, of a violation of one of the rights of the Convention invoked in the present case because of greenhouse gas emissions from the 33 respondent States? In particular, did the Applicants directly or indirectly and seriously suffer the consequences of the alleged insufficient action or inaction of the Respondent States to achieve the above-mentioned target of 1.5oC (see, for example, *Caron et al. Others v. France (dec.)*, no 48629/08, 29 June 2010; *Cordella and Others v. Italy*, nos 54414/13 and 54264/15, 24 January 2019; and *Aly Bernard and Others and Greenpeace - Luxembourg v. Luxembourg (dec.)*, no.29197 / 95, June 29, 1999)”

CLINTEL: These questions raise scientific and policy issues with respect to the causal link or correlation between greenhouse gas emissions from the 33 states concerned, and the alleged insufficient action by such states, and the suffering of the actual or potential victims. In addition, issues of legal responsibility arise. CLINTEL would provide science-, policy- and law-based analysis of these issues.

“3. If the answer to question 2 is in the affirmative, has there been a violation in the present case of Articles 2, 3 and 8 of the Convention, taken alone and in conjunction with Article 14, as well as of Article 1 of Protocol No. 1 to the Convention? In particular, having regard to their margin of appreciation in the field of the environment, have the respondent States fulfilled their obligations under the provisions of the Convention invoked, read in the light of the relevant provisions and principles, such as the principles of precaution and intergenerational equity, contained in international environmental law, including in international treaties to which they are Parties, in particular:

- by adopting appropriate regulations and applying them by means of adequate and sufficient measures to achieve the objective of containing the rise in temperature to 1.5oC (see, for example, *Tătar v. Romania*, no 67021/01, §§ 109 and 120, 27 January 2009, and *Greenpeace EV and others v. Germany (dec.)*, No 18215/06, 19 May 2009); and
- by basing their climate change mitigation regulations on appropriate surveys and studies ensuring effective public participation, as provided for in the Aarhus Convention of 1998 on Access to Information, Public Participation to the decision-making process and access to justice in environmental matters (see, for example, *Tătar v. Romania*, no 67021/01, § 118, 27 January 2009)?”

CLINTEL: For purposes of answering this question, we will assume that the answers to the previous question is affirmative. In addition to the principles referenced by the Court, these questions raise issues about the relation between the state’s margin of appreciation, the separation of powers in a democracy, and the rule of law. There are also important trade-offs to be made between the various rights and interests involved. Further, the collective 1.5 C temperature target, and how it corresponds to individual

state obligations, requires contextualization, as does the reality of public participation in environmental matters. CLINTEL wishes to provide analysis of these issues.

- 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.

We understand that the Court has given this Application priority consideration, and that the respondent states have been requested to respond by the end of February 2021. CLINTEL is willing to commit to meeting this deadline if the President is able to make a decision by early February.

Respectfully submitted,

On behalf of CLINTEL,

Dr A.J. (Guus) Berkhout
Emeritus Professor of Geophysics
Member of the Royal Netherlands Academy of Arts and Sciences (KNAW)
President of CLINTEL