

2023

Youth Voices for Human Rights Litigation in the Face of Climate Change

McKenzie Gallagher

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Comparative and Foreign Law Commons](#), [International Humanitarian Law Commons](#), and the [International Law Commons](#)

Recommended Citation

McKenzie Gallagher (2023) "Youth Voices for Human Rights Litigation in the Face of Climate Change," *Human Rights Brief*. Vol. 27: Iss. 1, Article 8.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol27/iss1/8>

This Regional Systems is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

YOUTH VOICES FOR HUMAN RIGHTS LITIGATION IN THE FACE OF CLIMATE CHANGE

*by McKenzie Gallagher**

I. In the European Court of Human Rights (ECtHR), six young activists, age eleven to twenty-four, filed a case against thirty-two countries claiming violations of their human rights related to climate change.¹ The Grand Chambers of the ECtHR heard the case, *Duarte Agostinho and Others v. Portugal and Others*, on September 27, 2023, but the court has yet to issue an opinion on the admissibility and merits of the claim.² The case was granted priority status and deferred directly to the Grand Chambers due to the importance of the issue, climate change.³

The youth applicants are arguing the States violated their right to life and right to privacy under Article 2 and Article 8 of the European Convention on Human Rights (ECHR).⁴ The applicants also raised

* McKenzie Gallagher is a second year law student at American University Washington College of Law. McKenzie attended Gonzaga University where she earned a bachelor's degree in political science. After graduating, McKenzie attended University College Cork, in Cork City, Ireland, to pursue an LL.M. in International Human Rights Law and Public Policy. She is also involved in the American University International Law Review where she is an incoming Note and Comment Editor.

1 Duarte Agostinho and Others v. Portugal and 32 Others (no. 39371/20) (Sept. 27, 2023).

2 *Id.*

3 Press Release, Save the Children, Groundbreaking Climate Case Involving Children to be Heard by European Court Tomorrow (Sept. 26, 2023), <https://www.savethechildren.net/news/groundbreaking-climate-case-involving-children-be-heard-european-court-tomorrow>.

4 Convention For the Protection of Human Rights and Fundamental Freedoms, open for signature Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1954). Art. 2 and Art.8 [hereinafter ECHR]; Countries named include, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Denmark, Estonia, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania,

claims under Article 3 of the ECHR, the prohibition of ill treatment, and Article 14 of the ECHR, prohibition of discrimination.⁵ Lastly, the petitioners argued the violations of Articles 2, 3, 8, and 14 should be read in light of Article 3(1) of the United Nations Convention on the Rights of the Child.⁶ The claims are rooted in the argument that reducing emissions is well within the power of the States, but the States have failed take action to do so, thus evading the State's positive human rights obligations.⁷ To be successful, the youths must prove they are not only personally and sufficiently affected by rising global temperatures, but also show the governments' current carbon emissions will fail to keep global warming temperatures within 1.5 degrees Celsius as agreed to in the 2015 Paris Climate Agreement.⁸

In response, the States questioned the jurisdictional grounds of the lawsuit, specifically, the territorial jurisdiction and exhaustion of domestic remedies required in the ECtHR.⁹ The exhaustion

Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Norway, Russia, Switzerland, Turkey, Ukraine and the United Kingdom. See *Young people to take 32 European countries to court over climate policies*, THE GUARDIAN (Sept. 14, 2023), <https://www.theguardian.com/environment/2023/sep/14/young-people-to-take-32-european-countries-to-court-over-climate-policies>.

5 Press Release, Grand Chambers European Court of Human Rights, Grand Chamber Hearing in the case of Duarte Agostinho and Others v. Portugal and 32 Others (Sept. 27, 2023) <https://hudoc.echr.coe.int/eng-press#%7B%22fulltext%22:%5B%2239371/20%22%22%22sort%22:%5B%22kdate%20Descending%22%22%7D>]

6 See *id.*; Convention on the Rights of the Child, Nov. 20, 1989 1577 U.N.T.S. 3, Art. 3(1) (1989) (stating in Article 3(1), "In all actions concerning children, whether undertaken by public or private social welfare institutes, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration).

7 *Six young activist suing 32 countries for failing to address climate change*, CBS NEWS (Sept. 27, 2023) <https://www.cbsnews.com/news/climate-change-lawsuit-european-court-human-rights-portugal-activists/>.

8 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104; see also Catarina Demony, *Youth vs. Europe: 'Unprecedented' climate trial unfolds at rights court*, REUTERS (Sept. 27, 2023), [https://www.reuters.com/world/europe/youth-vs-europe-unprecedented-climate-trial-kick-off-rights-court-2023-09-27/#:~:text=Sept%2027%20\(Reuters\)%20%2D%20Six,violation%20of%20their%20human%20rights](https://www.reuters.com/world/europe/youth-vs-europe-unprecedented-climate-trial-kick-off-rights-court-2023-09-27/#:~:text=Sept%2027%20(Reuters)%20%2D%20Six,violation%20of%20their%20human%20rights).

9 See ECHR art. 35 (stating, "The Court may only deal with the matter after all domestic remedies have been exhausted. . ."); see also Ole W Pedersen, *Climate Change Hearing and the ECtHR Round II*, EJIL:TALK! (Oct. 9, 2023), <https://www.ejiltalk.org/>

of domestic remedy provision does have established exceptions, the one raised by the youth in this case is the absence of adequate domestic remedies.¹⁰ Specifically, given the urgency of climate change, the applicants argue it would not be feasible to pursue domestic proceedings and doing so would impose an unreasonable or disproportionate burden on them.¹¹ The States further argue the petitioners do not fall within the definition of ‘victim’ and question whether they can prove an immediate direct impact, not just speculation that they will be harmed in the future.¹² Although the ECtHR has yet to rule on standing and merits in the *Duarte* case, domestic courts in the past year have ruled in favor of climate activist claiming infringement on their civil and human rights.¹³

In the United States, in the District Court of Montana future generation litigants, young climate activists, argued Montana state policies were violating their Constitutional right to a clean environment in the case *Held v. State of Montana*.¹⁴ The judge found a state policy, which permits the use of fossil fuels without considering the effects of greenhouse gas, to be unconstitutional.¹⁵ The ruling was the first in a United States court to conclude a Constitutional right to a safe and healthy environment existed.¹⁶ However,

climate-change-hearings-and-the-ecthr-round-ii/.

10 European Court of Human Rights (ECHR), Practical Guide on Admissibility Criteria (Feb. 28, 2023).

11 European Court of Human Rights (ECHR), Applicants Form for Duarte Agostinho and Others v. Portugal and 32 Others, ¶ 63, accessed at <https://youth4climatejustice.org/wp-content/uploads/2020/11/GLAN-ECtHR-Application.pdf>.

12 *see* Pedersen, *supra* note 10 (explaining under Article 34 of the European Convention, a victim must be directly impacted by the violation to have standing).

13 *Held v. State of Montana*, Cause No. CDV-2020-307 (14 Aug 2023); HR 20 december 2019, Rechtspraak.nl (Urgenda Foundation/State of Netherlands) (Neth.).

14 *Held v. State of Montana*, Cause No. CDV-2020-307 (14 Aug 2023).

15 *Id.*

16 Matthew Brown, *Young environmentalist won a landmark climate change ruling in Montana. Will it change anything?*, AP NEWS (Aug. 15, 2023), <https://apnews.com/article/climate-change-youth-lawsuit-montana-86b181dc09ede1c6c21b-cc0a4e5a2a38#>; *see also* Zack Burdryk, *Montana appeals landmark climate change ruling in case brought by young advocates*, THE HILL (Oct. 2, 2023), <https://thehill.com/policy/energy-environment/4234450-montana-appeals-landmark-climate-change-ruling-in-case-brought-by-young-advocates/> (arguing the Montana ruling, although not establishing federal precedent, “will likely add fuel to similar court efforts” in states such as New York, Hawaii, Illinois, Massachusetts, Pennsylvania, and

Montana’s Attorney General issued an appeal on the case in early September of 2023, putting the fate of Montana case and its implications on environmental justice in limbo.¹⁷ Similarly, in Europe, in the case *Urgenda Foundation v. State of the Netherlands*, the Supreme Court of the Netherlands found failing to reduce emission in line with the Paris agreement was a violation of article 2 and 8 of the ECHR.¹⁸

Overall, *Duarte* is a monumental international legal step for climate justice because it is the first time the ECtHR has considered a question regarding human rights violations connected to climate change.¹⁹ As the original human rights court, the ECtHR often sets norms in the international human rights community, and the court’s decisions have great impact on domestic, regional, and international jurisprudence regarding climate change. Thus, a win for the youth or, conversely, the case just being heard in the ECtHR, has the potential to prompt other States, European or otherwise, to assess their current environmental policies. Prospectively, the ECtHR case and domestic cases such as *Held* and *Urgenda Foundation* serve as a catalysis for an emerging customary international norm on emission standards under international human rights and domestic law.

Rhode Island).

17 *Held v. State of Montana*, petition for cert. pending, Cause No. CDV-2020-307 (filed Sept. 29, 2023).

18 HR 20 december 2019, Rechtspraak.nl (Urgenda Foundation/State of Netherlands) (Neth.).

19 *See* Demony, *supra* note 9 (noting the case is the largest climate case heard before the ECtHR).