

WHEN YOUTH TAKE STATES TO COURT



A HANDBOOK TO UNDERSTAND
THE PROCEEDINGS OF
CLIMATE LAWSUITS

Learning from
the case:

*Duarte Agostinho
et al v. Portugal
and 32 Other
States*



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YEE!
YOUTH AND
ENVIRONMENT
EUROPE

1 | YOUTH IN CLIMATE LITIGATION

Youth climate movements have gained visibility in global news and media, largely since the 2019 Fridays for Future protests led by climate activist Greta Thunberg. Through lively demonstrations in the streets and school strikes, young people have contributed significantly to raising awareness about the destructive consequences of the climate crisis, and in demanding urgent State action to address it. Youth have been emphasizing the intergenerational impacts of climate change, reminding us that the heaviest burden to address the worst effects of the climate crisis are on the shoulders of young people, children and future generations.

Council of Europe

= an international organisation including 46 European countries, set up to promote democracy, human rights and the rule of law

European Court of Human Rights

= the international court of the Council of Europe, oversees the implementation of the European Convention on Human Rights

Apart from peaceful protests, young people have also increasingly made use of the law to strive for a healthy and safe environment. Young people and children are now turning to courts to challenge states' climate inaction and to make their voices heard in the fight against the climate crisis.

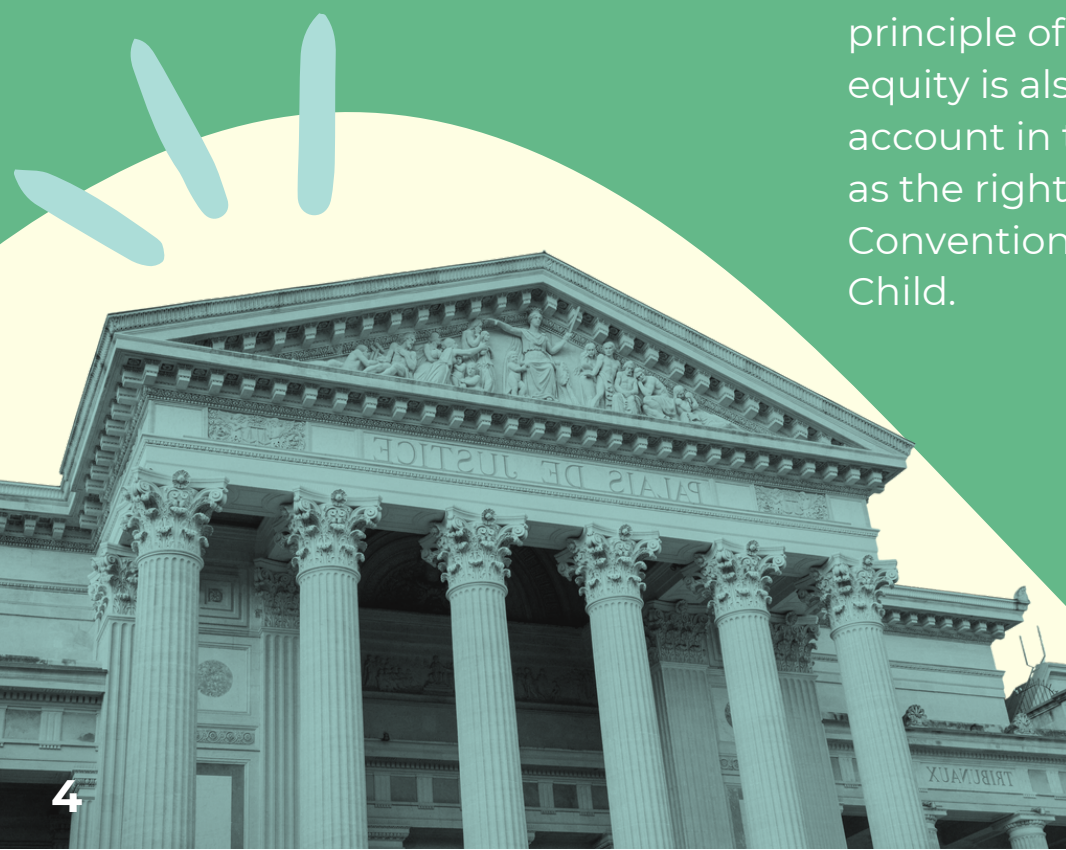
Worldwide, the number of climate lawsuits over the past two years has more than doubled, with 34 rights-based climate cases brought by and on behalf of youth as of the end of 2022.

Among others, this trend has also been observed in the European Court of Human Rights (ECtHR or the Court), the adjudicating body of the Council of Europe (CoE). Since 1959, the Court has been interpreting the European Convention on Human Rights (ECHR), which coins the protection of 17 rights and interprets the potential state violation of the latter. Several of the recent climate lawsuits brought forward in Europe refer specifically to violations of human rights arising from the ECHR.

Even though the ECHR does not directly recognise environmental rights, such as the *right to a healthy environment* (contrary to the UN system and many states' constitutions), the ECtHR has ruled on many cases that involve environmental matters. From the perpetration of industrial activities, exposure to nuclear radiation, natural disasters, environmental risks and industrial pollution, in many stances the Court has found that the ECHR rights have been violated. **On the 27th of September 2023, the ECtHR will hear the third of a series of climate related cases, Duarte Agostinho et al v. Portugal and 32 Other States** (Duarte Agostinho).

What is special in the Duarte Agostinho case, similar to the already heard Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Klimaseniorinnen) and Câreme v. France (Câreme), is that the plaintiffs claim that the states' failure to reduce greenhouse gas emissions poses a threat on their lives. The cases Klimaseniorinnen and Câreme were already heard this summer. All three cases are based on states' insufficient action taken to mitigate the climate crisis and to halt the increase in global warming, which are unprecedented claims in front of the ECtHR.

What is also unique about the Duarte Agostinho case is that the authors are all children and youth from 11 to 24 years old. The principle of intergenerational equity is also to be taken into account in the discussion, as well as the rights enshrined in the UN Convention on the Rights of the Child.



2 | EXPLAINING THE CLAIMS OF DUARTE AGOSTINHO

September 2020, **six young people and children from Portugal made a complaint to the European Court of Human Rights (ECtHR)** stating that the climate inaction of 33 states under the jurisdiction of the Court was endangering their lives and well-being. They are supported by the Global Litigation Network.

How did they do this?

They claim that the mentioned states (including France, Germany, the United Kingdom and Norway) have failed to cut greenhouse gas emissions according to the Paris Agreement. Such inaction, they continue, has led to climate disasters such as forest fires; and to a change in climate, such as to heatwaves, which resulted in violating their rights protected by the ECHR.

They specifically mention that such extreme weather events have an impact on:

- their **right to life** (protected by article 2 ECHR);
- their **right not to be subject to inhuman or degrading treatment** (protected by article 3 ECHR)
- their **right to private life** (protected by article 8 ECHR):
under this, they claimed violation of their right to mental and physical well-being
- their **right to non-discrimination** (protected by article 14 ECHR). This last was raised as in the long run, climate change will have higher impacts on the lives of youth and children, compared to adults and older people.

The ECtHR decided to *fast-track* the Duarte Agostinho application, a process which is only followed in exceptionally important cases, and asked the involved states to respond to the claims quickly. Even though the concerned states attempted to prevent the case from being *fast-tracked*, the Court strictly demanded them to submit their observations in due time. Subsequently, once the Chamber had considered the application, it “relinquished” (passed to) the case to the Grand Chamber.

The Grand Chamber usually steps in at a more advanced stage in the proceedings, for example when the application is raising a serious question affecting the interpretation of the Convention. The Chamber decided to relinquish all three climate related cases to the Grand Chamber (Klimaseniorinnen, Cêreme, Duarte Agostinho). The case has also gained a lot of attention from third parties, mostly NGOs, such as Amnesty International and Save the Children, who have been advocating in support of the plaintiffs.

On **27th September 2023**, there will be the public hearing at the Court, which will be the occasion for the parties to present the facts. The possibility to have a public hearing interests about 30 cases per year and is part of the Court examination of the case.

ECtHR Vocabulary:

Chamber

The judicial entity of a Court's Section. It is firstly assigned the case and is composed of the President of the Section, one national judge and five other judges.

Grand Chamber

Made up of the Court's President and Vice-Presidents, the Section Presidents and the national judge, together with other judges selected by drawing of lots.



3 | EXPLAINING THE ECHR PROCESS

Through the case-study of Duarte Agostinho

When is an application deemed admissible by the ECtHR?

In the case of Duarte Agostinho a Chamber, composed of 7 judges, was the first to examine the case.

In a second stage, the Chamber decided to pass the case to the Grand Chamber (*relinquish*). It usually happens when the case raises a serious question affecting the interpretation of the Convention or if there is a risk of inconsistency with a previous judgement of the Court.

The cases that pass to the Grand Chamber are final and cannot be appealed against. The Grand Chamber will not consider the parts of the case that had already been declared inadmissible.

[See here](#) how to submit an application to the Court.

What is meant by 'admissibility'?

When a case is deemed *admissible* it means that the case is considered suitable to be tried in court

But what makes a case 'admissible'?

To see if a case is admissible at the ECtHR, the most important things to take into consideration are the following:

- Before applying to the Court, you must **first seek remedy within your state**, making sure you comply with national procedures (e.g. respect the timelines). If that does not work, make sure the complaint you raised at national level is the same you present to the Court
- You can only invoke a violation if **you are the victim** of that violation. There are some exceptions, however they are very specific and depend on a case-by-case basis
- The complaint has to be brought against a **state party to the Convention**. It is not possible to claim your rights were violated by a private company, an individual, nor by those states who have not ratified the Convention or its Protocols
- The violation which you complain about must have occurred within the **territorial jurisdiction of the Member State** concerned or in a territory effectively controlled by it.
- You must invoke **a right which is protected** under the Convention and its Protocols (*ratione materiae*)
- You should **prove that you suffered** a significant violation of the claimed human rights. You must **provide sufficient evidence** to support the facts and your legal argument.

There are more cases for which your case might be declared inadmissible, if you are interested in knowing more, please consult [here](#)

Can the ECtHR examine cases on environmental matters and climate change that breach human rights?

As of today, the ECtHR has not yet ruled on state climate-change action. Klimaseniorinnen, Cêreme and Duarte Agostinho are the three cases pending before the Grand Chamber of the Court on this issue.

The hearing is also happening in a particularly exciting stage for youth and children involvement in human rights climate litigation in cases of climate change.

As stressed by third-parties in a written observation to Duarte Agostinho, including NGOs, academics and international study centres, when we talk about the ECHR and how it relates to the rights of young people and children, other international agreements have to be taken into consideration, such as the United Nations Convention on the Rights of the Child (CRC), which was signed by all state members to the ECHR.

When we look at both of these agreements together, they make it very clear that there are special responsibilities to protect the rights of young people and children, especially in situations where their well-being and growth might be at risk.

Likewise, the Court should also consider how the United Nations, Inter-American, and African human rights systems interpret their own treaties. The rules developed within these systems apply not just within their own borders but also in situations where their state members might do things that harm people outside their borders or when they try to control private individuals or groups that could harm people in other places. Some of these systems have even used this approach to address issues related to climate change that cross national borders.

To sum up, the Court has to consider what other international agreements and organisations say about how rights should be protected, not just what the ECHR says by itself. This is because the Court understands that human rights are part of a bigger picture of international rules and standards that countries have agreed to follow.

Did you know?

That there is no cost related to the procedures, there is no need to be represented by a lawyer and you can submit the application in any of the languages of the member states.

Duarte Agostinho et al, however, are supported by the Global Litigation Network.



What is the role of the ECtHR in enhancing climate action?

The ECHR is a “living instrument”, meaning that the Court should interpret it in light of today’s world. Simply speaking, the Convention is to be understood as a rulebook: being a “living instrument” means that it is the Court’s task to interpret the rules of the ECHR properly, especially when things change over time.

In light of this, it can be said that the Convention is designed to effectively deal with new and challenging human rights issues, such as climate change. A guidance on climate related matters is more than ever a burning issue and the Court, through its judgments, can provide a unique guidance to its member states on particular obligations under the Convention.

The Court can therefore have a very important role in promoting climate action through explaining the legal rules and principles that apply to future problems related to climate change. For example, it can decide if states should be held responsible for the pollution that causes climate change or if they need to compensate people harmed by climate-related events.

When the Court interprets the Convention, it sets a kind of example for how it should be used in similar situations in the future. This is called "creating a precedent." For example, courts that deal with human rights can decide if the actions that states take to deal with climate change are good enough to protect people's rights. If they say that a state needs to do more, it sets a standard for others to follow.

To conclude, by interpreting the rules, the ECtHR guides us on how to follow them, especially when it comes to protecting people's rights and the environment.



4 | EXAMPLES OF PREVIOUS SUCCESSFUL CLIMATE CASES

Urgenda Foundation v. State of the Netherlands

The landmark Urgenda case is important to keep in mind, even if not decided in front of the ECtHR. It was the first climate case in the world in which citizens established that their government has a legal duty to prevent dangerous climate change.

On December 20, 2019, the highest court in the Netherlands, the Supreme Court, ruled that the State has a duty to reduce the pollution that causes climate change **because it's a human rights obligation**. This decision was a big deal because it was the first time ever that citizens were able to legally force their government to take strong action to prevent climate change.

It all started when the Urgenda Foundation and 900 Dutch citizens took the Dutch government to court: they argued that the State's climate inaction was endangering their human rights, including the right to life (article 2 ECHR) and the right to private and family life (article 8).

First, the Court of the city of the Hague ruled that the government had to take immediate steps to contrast climate change, by reducing greenhouse gas emissions by at least 25% by 2020 (compared to the State's plan to reduce it by 17%). The government disagreed with the court's decision, so they appealed it to the Court of Appeal of the Hague, which agreed with the first Court, and then in 2019 the Supreme Court also said the government must follow the 25% reduction rule in light of articles 2 and 8 of the ECHR.

In conclusion, the Dutch courts ordered the government to do more to stop climate change, as it affects people's lives and future, and the government has a duty to take action.

In reaching this conclusion, the Court cited (without directly applying) European and international principles, such as the precautionary principle and the sustainability principle embodied in the UNFCCC.

Neubauer et al. v. Germany

Another important case decided at national level was led by youth. In 2020, a group of young people in Germany went to the Federal Constitutional Court arguing that the State did not respect its promises under the Paris Agreement to limit global warming to less than 2 degrees Celsius, which would require a cut by 70% of greenhouse gas emissions by 2030 compared to the 1990s. By failing to do so, they said, the government violated their rights as protected by Germany's constitution, as pollution would harm the environment and affect their future, violating their rights to a good future and a safe life.

The Court ruled in favour of the youth saying that the government plan did not do enough to protect the environment and future generations.

The Court said that protecting the climate was also about protecting the rights of young people and future generations and told the government to make a new plan by the end of 2022 that would set clear rules for reducing emissions from 2031 onwards. In response, the government changed its plan to make it stricter, requiring at least a 65% reduction in emissions from 1990 levels by 2030. This new plan has been in effect since August 31, 2021.



5 | NEXT STEPS

We need the Council of Europe to recognize the 'Right to a Healthy Environment' !

The ECHR does not currently include a specific "right to a healthy environment", In the case of Duarte Agostinho for example, young people relied on other rights in order for the case to be admissible to the Court.

Now, imagine if the ECHR had a separate *right to a healthy environment*. Recognizing the right to a healthy environment in the ECHR would mean that the Court could hold countries accountable for not protecting the environment and people's well-being more easily, for instance in light of the adverse impacts of climate change.

However, this does not mean that this would lead to a flood of new cases at the ECtHR: on the contrary, such recognition has to be understood as an instrument to *prevent* states from pursuing economic activities that endanger the environment and the right to live in a healthy environment.

So, if the ECHR recognized the right to a healthy environment, it could make countries think twice about not taking action on climate change because there would be a clear link between climate change and human rights violations. It would give the ECtHR a better foundation for handling environmental cases consistently and strengthening its existing human rights rules related to the environment.

The protection of the right to a healthy environment by the ECHR would also therefore be an instrument for younger and future generations to better legitimate their claims and concerns, as well as the principle of intergenerational equity enshrined in the 1992 Rio Declaration on the Environment and Development, the preamble of the Paris Agreement and in the 1992 United Nations Framework Convention on Climate Change.

What is the relevance of Duarte Agostinho for other upcoming cases?

Apart from the before-mentioned Klimaseniorinnen and Cêreme, there are other similar cases pending in front of the ECtHR, all involving youth and children:

- [Soubeste et al v. Austria and 11 other states](#)
- [Engels v. Germany](#)
- [Uricchio v. Italy and 31 Other States](#)

The Court's decision on Duarte Agostinho, if in favour of the claimants, will most probably create a precedent for these and therefore represent a landmark judgement at the ECtHR!

What is a precedent?

A precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues

Want to learn more about climate litigation?

- [Q&A-booklet](#) about ECHR
- [Guide](#) for writing applications to the ECtHR
- [ARTE Documentary](#) about climate lawsuits
- YEE [Environmental Law Knowledge Bank](#)

The streaming of the hearing will be available [here](#) afterwards!

Don't forget to follow the Duarte Agostinho hearing on the 27th of September!

We will keep you updated on our Instagram



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