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## DUARTE AGOSTINHO AND OTHERS V. PORTUGAL: A CASE OF CLIMATE

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### ABSTRACT

The system meets its limits when dealing with problems beyond its original design scope. The case of Duarte Agostinho and Others v. Portugal and 32 Others is more than a legal battle—it is a collision between human rights, climate change, and the limitations of judicial authority. The judicial mechanism which safeguards personal liberties shows insufficient capability to address universal problems. International legal systems experience weakness during global disasters when courts decline to establish authority over such cases. Six youth petitioners appeared before the top European human rights tribunal to hold accountable governments that produce pollution affecting their upcoming life. The applicants encountered systematic rules about jurisdictional limits and procedural requirements instead of rejection. Climate change exists as a real phenomenon while legal structures still need time to develop proper mechanisms to combat it. Without court enforcement of nation-state responsibility what becoming of justice? The actual fight for justice exists outside judicial systems because we need to redefine what fair treatment ought to be during this time of global environmental crisis.

### INTRODUCTION

The case of Duarte Agostinho and Others v. The European Court of Human Rights (ECtHR) received a groundbreaking climate change case known as Portugal and 32 Others. Six Portuguese youth applicants filed a case at the European Court of Human Rights against 33 European states

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including Portugal because they believed the countries violated their human rights under the European Convention on Human Rights (ECHR). The applicants argued that climate change effects including heatwaves and wildfires alongside air pollution violations their rights to life (Article 2) and freedom from inhuman treatment (Article 3) and respect for private life (Article 8) and non-discrimination (Article 14).

The case stands important because it marks one of the earliest attempts to pursue international human rights law accountability of multiple states regarding their climate change responsibilities.<sup>3</sup> The applicants attempted to prove that the respondent states held extraterritorial authority over them because climate change operates globally and each nation produces greenhouse gas (GHG) emissions.

## BACKGROUND AND FACTS<sup>4</sup>

The applicants who filed their complaint ranged from 8 to 21 years old at the time and resided in Portugal which faces severe consequences from climate change through extreme heat waves and droughts and devastating wildfires. The petitioners explained they had already endured the negative consequences of climate change which produced health problems and anxiety together with disturbances to their regular routines. The applicants presented the 2017 Portuguese wildfires that took more than 100 lives along with significant property destruction to show how climate change creates instant devastating effects.

The applicants maintained that 33 states including Portugal should bear responsibility for climate change because of their greenhouse gas emissions which stem from domestic production and

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<sup>3</sup> Harj Narulla, Finnian Clarke & Nikila Kaushik, *Climate Litigation: The End of the Beginning?*, 166 SOLIC. J. 13 (November 2023).

<sup>4</sup> Duarte Agostinho & Others v. Portugal, App. No. 75473/13, Eur. Ct. H.R. (2021).

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export-import of fossil fuels. According to the applicants the respondent states lacked adequate climate change mitigation measures that violated human rights standards.

## **LEGAL ISSUES**

The legal challenge involved multiple central questions which must be addressed.

1. The core dispute centred on whether all states except Portugal could exercise authority over the applicants through Article 1 of the ECHR. The applicants maintained that through their climate change emissions states established enough connection to warrant jurisdiction beyond their borders. The applicants based their argument on "control over Convention interests" which demonstrated how state emissions and their lack of regulation could affect the rights of the applicants.<sup>5</sup>
2. The respondent states maintained that the applicants needed to finish their legal proceedings in Portugal and other nations before approaching the ECtHR. The applicants argued that domestic remedies proved ineffective or unavailable especially because the nature of climate change litigation was both new and transnational.<sup>6</sup>
3. The applicants presented themselves as existing climate change victims together with future victims who faced rising dangers from climate change throughout their lifespans. The respondents disputed this argument because the applicants failed to establish a direct connection between their experienced damages and the states' activities or non-actions.<sup>7</sup>

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<sup>5</sup> Disruption, Special Climate Considerations, and Striking the Balance: International Decisions: Review Essay, 119 Am. J. Int'l L. 129 (2025).

<sup>6</sup> Duarte Agostinho & Others v. Portugal, App. No. 75473/13, Eur. Ct. H.R. (2021).

<sup>7</sup> Ibid..

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## THE COURT'S DECISION

The Grand Chamber of the ECtHR made its ruling on April 9, 2024. All states except Portugal received an inadmissible case judgment from the Court which assessed jurisdiction and domestic remedy exhaustion and victim status.

### 1. Jurisdiction:

Portugal maintained territorial jurisdiction because the applicants were Portuguese nationals living within its borders. The court did not accept the applicants' position which maintained that 32 states should face extraterritorial jurisdiction in this case.

The Court stated clear terms for Article 1 ECHR jurisdiction by indicating territorial jurisdiction stands as the primary basis yet extraterritorial jurisdiction exists only in exceptional cases. The applicants failed to demonstrate how the other 32 states exercised control over their person or Convention rights.

The applicants failed to persuade the Court their argument about state contributions to climate change establishing sufficient jurisdictional grounds. Climate change exists as a worldwide concern which means jurisdiction based on GHG emissions would create an unmanageable expansion of Convention territory. According to the Court's ruling the ECHR exists to safeguard individual rights of people living in states that are part of the Convention rather than address worldwide environmental problems.<sup>8</sup>

### 2. Exhaustion of Domestic Remedies:

The Court established that the applicants failed to use all available domestic remedies in Portuguese legal systems. According to Portuguese law there exists a complete set of remedies for

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<sup>8</sup> Key Challenges for Climate Change Litigation - Human Rights Meet Precaution: The Duarte Agostinho Case, in Focus: Dispute Settlement and Community Interests: Colloquium in Honour of Prof. Dr. Rüdiger Wolfrum's 80th Birthday, 65 GERMAN Y.B. INT'L L. 159 (2022).

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environmental and climate-related matters which includes constitutional safeguards together with civil responsibility actions and administrative procedures.

The applicants' claim regarding ineffective or unavailable domestic remedies failed before the Court because the Court recognized that new climate change litigation does not exempt applicants from exhausting their domestic remedies. The court stated that the applicants had failed to use the existing Portuguese remedies which were accessible to them.<sup>9</sup>

### 3. Victim Status:

The Court did not decide on victim status because it rejected the case based on jurisdiction and domestic remedy requirements. The Court recognized that the applicants failed to establish direct proof connecting their suffered harm to the actions or omissions of the respondent states.<sup>10</sup>

## ANALYSIS AND IMPLICATIONS

The decision in *Duarte Agostinho and Others v. Portugal and 32 Others* case establishes important consequences regarding climate change litigation and human rights law applications for global environmental issues.

### 1. Limits of Extraterritorial Jurisdiction:

The Court established through this decision that the ECHR grants jurisdiction only through territorial grounds. The Court acknowledges extraterritorial jurisdiction in specific exceptional cases where states control territories or individuals but continues to reject jurisdiction attempts based on indirect outcomes.

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<sup>9</sup> *Duarte Agostinho & Others v. Portugal*, App. No. 75473/13, Eur. Ct. H.R. (2021).

<sup>10</sup> *Ibid.*

This case shows how challenging it becomes to enforce human rights laws across borders since the Court denied extraterritorial jurisdiction.<sup>11</sup> According to this decision the European Court of Human Rights seems unfit to serve as a venue for climate change liability because state environmental actions that affect areas beyond their borders remain beyond its jurisdiction.

## 2. Exhaustion of Domestic Remedies:

The Court highlights domestic remedies as a required step before seeking intervention at the ECtHR because it values national legal systems in climate change matters. According to the decision applicants need to attempt resolving their issues through domestic courts before approaching the ECtHR.

The requirement is expected to create difficulties for climate change litigants who need to deal with situations where multiple states are affected or when the legal issues are new and untested.<sup>12</sup> Through this ruling the Court demonstrates how domestic courts possess the ability to advance climate change jurisprudence.

## 3. The Role of Human Rights Law in Climate Change:

Future court cases regarding climate change policy will remain open even though the Court's recent decision reduced ECHR's power in this domain. The Court recognized both the dire state of climate change and its harmful consequences to human rights which led them to conclude that states should actively protect against climate change occurrences within their borders.<sup>13</sup>

## 4. Broader Implications for Climate Litigation:

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<sup>11</sup> Harj Narulla, Finnian Clarke & Nikila Kaushik, *Climate Litigation: The End of the Beginning?*, 166 SOLIC. J. 13 (November 2023).

<sup>12</sup> Harj Narulla, Finnian Clarke & Nikila Kaushik, *Climate Litigation: The End of the Beginning?*, 166 SOLIC. J. 13 (November 2023).

<sup>13</sup> Armando Rocha & Romulo Sampaio, Climate Change before the European and Inter-American Courts of Human Rights: Comparing Possible Avenues before Human Rights Bodies, 32 REV. EUR. COMP. & INT'L ENVTL. L. 279 (2023).

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- The decision in \*Duarte Agostinho\* is part of a growing trend of climate change litigation around the world. The particular ruling in hand might have restricted the climate change litigation only in European court but it doesn't put any restriction on states to apply other legal avenues to tackle climate change problem at their level. Since states are also contributors to climate change they should find solutions too.

Multiple domestic courts throughout different countries have established the connection between climate change and human rights violations by mandating governments to improve their GHG emission reduction efforts. The United Nations Human Rights Committee along with other international bodies have started addressing the human rights issues related to climate change.

## CONCLUSION

The case of Duarte Agostinho and Others v. Portugal and 32 Others demonstrates a fundamental yet unsuccessful approach to use human rights law for climate change resolution. Even though the European Court of Human Rights restricted ECHR's state accountability power regarding climate change activities it revealed domestic courts as potential leaders in building climate change law. One can conclude from the decision of court that the problems presented by new generation is valid and the solution to tackle this also needs to be new. This case and many other such cases pose worldwide complexities created by climate change from time to time. Other legal avenues demonstrate better potential than the ECHR for holding states responsible for their climate change involvement because the ECHR lacks appropriate jurisdiction.