



C A D W A L A D E R
CLIMATE
Connecting Climate Change and the Law

European Citizens Sue States for Breach of Human Rights Resulting from Failure to Take Stronger Climate Action

November 14, 2023



By Jason Halper
Partner and Co-Chair | Global Litigation



By Sharon Takhar
Associate | White Collar Defense and Investigations

On September 27, 2023, six “Portuguese young people” **were heard by the European Court of Human Rights** (ECtHR) in a lawsuit against 32 European governments, including all EU member states, alleging that their failure to act fast enough against climate change has violated the applicants’ human rights to life, physical and mental wellbeing. The applicants claim that the respondents are failing to fulfil their obligations under the Paris Agreement to limit global warming.

The **original application** cites a number of contributions to climate change made by the respondent states: (i) permitting the release of emissions within national territory and offshore areas over which they have jurisdiction; (ii) permitting the export of fossil fuels extracted on their territory; (iii) permitting the import of goods, the production of which involves the release of emissions into the atmosphere; and (iv) permitting organizations within their jurisdiction to contribute to the release of emissions overseas. Taken together, the applicants say, the respondents have contributed to climate change and, while mitigation measures have been adopted, contributions to adverse climate change continues. The applicants are seeking an order from ECtHR requiring the respondent governments to take more ambitious action.

Describing the impact on them, the applicants say that climate change has contributed to harm to human health. In an expert report commissioned to supplement their application, the applicants say that Portugal is already experiencing the impact of climate change, including an increase in mean and extreme high temperatures, with heatwaves becoming more frequent. As a result, the region is also prone to wildfires – 120 people died and 500,000 hectares of land were burned during wildfires preceded by heatwaves. Responding to the application, a lawyer

on behalf of Greece claimed that climate change cannot be directly linked to an adverse impact on human health, stating “[the] effects of climate change, as recorded so far, do not seem to directly affect human life or human health.” Lawyers on behalf of Portugal stated that the applicants failed to provide evidence of the specific damages caused by climate change on their lives.

The case was originally filed in September 2020. The September 27 hearing was one of the largest before the ECtHR, with 22 judges and 86 government lawyers, and took place following one of the hottest summers on record in Europe. A decision is expected in 2024.

Taking the Temperature: The claims made in this case echo certain conclusions reached in the United Nations’ [first global stocktake](#) on parties’ achievements under the Paris Agreement. The UN acknowledged that although significant progress has been made, there is a crucial need for nations to significantly enhance their clean energy ambitions if they are to achieve their Paris-aligned objectives.

In July 2023, [we discussed](#) the Grantham Institute’s report on trends in climate litigation and the types of strategies being employed by claimants. One of these included so-called government framework actions in which plaintiffs focus on a government’s response to climate change and potentially, its failure to implement policies or legislation. The case brought by the six Portuguese young people falls squarely within this category.

In June 2023, [we discussed](#) the lawsuit filed by, among others, Greenpeace and 12 Italian citizens against ENI S.p.A. alleging that ENI knew of the detrimental effect of fossil fuel burning since around 1970 but through “lobbying and greenwashing” continued to encourage extraction, thereby contributing to climate change, and violating the citizens’ rights to life, health and private and family life. In March of this year, a group of Swiss citizens accused the Swiss government of infringing on the right to life and health of elderly women via its climate-related policies. The case is pending in the European Court of Human Rights.

Comparable cases have also been filed in the U.S. In Montana, 16 residents—ranging from ages 2 to 18—[commenced litigation](#) claiming that they “have been and will continue to be harmed by the dangerous impacts of fossil fuels and the climate crisis,” and that the defendants have violated the Montana Constitution by fostering and supporting fossil fuel-based energy policies in the state that led to these conditions. In September this year, [the court struck down](#) on state constitutional grounds certain provisions of the Montana Environmental Policy Act (MEPA), which restricted Montana from incorporating the impact of greenhouse gas emissions or other forms of climate change in environmental reviews. Similar constitution-based climate-related suits against state governments are pending in other U.S. states.