



Our Children's Trust Youth v. Gov

Via FedEx and Fax

February 11, 2021

Judge Yonko Grozev
President, Fourth Section
European Court of Human Rights
Council of Europe
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Strasbourg, France
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Re: Request for leave to intervene in *Claudia Duarte Agostinho and Others v Portugal and 33 Other States* (Application no. 39371/20)

Dear Judge Grozev,

Pursuant to Article 36(2) of the Convention and Rule 44 § 3(b) of the Rules of the Court, Our Children's Trust respectfully requests leave to intervene in *Claudia Duarte Agostinho and Others v Portugal and 33 Other States* (Application no. 39371/20) as communicated on November 13, 2020.

1. Purpose and Function of Our Children's Trust

Our Children's Trust (OCT) is a non-governmental organization that has spent over a decade providing strategic, campaign-based legal services to young people in order to secure their binding and enforceable legal rights to a healthy atmosphere and a stable climate based on the best available science. Our legal efforts – guided by constitutional, public trust, and human rights law as well as the laws of nature – aim to ensure systemic and science-based climate recovery planning and remedies at federal, state, and global levels. We work closely with a team of highly specialized experts who inform and support these efforts with their proficiency in a wide range of fields, including climate science, children's health, economics, energy, and greenhouse gas emissions accounting.

OCT's legal work in the United States includes the landmark case of *Juliana v. United States* in which twenty-one youth plaintiffs are suing the federal government for actively interfering with their rights to life, liberty, personal security, cultural autonomy, and equal protection of the law. Over the last decade, we have filed similar cases on behalf of youth plaintiffs in many U.S. states, including Alaska, Florida, Montana, and Washington. We have also provided our legal and scientific expertise to climate litigation efforts on behalf of youth plaintiffs in countries around the world including Canada, Mexico, Colombia, India, Pakistan, Norway, and Ukraine.

OCT has a strong interest in the development of legally accurate and coherent jurisprudence in courts and tribunals around the world on the topic of children's rights as they relate to climate change. It is crucial that such jurisprudence be based on the best available science to ensure that the fundamental rights of youth and future generations to a stable climate are adequately protected. Our request for leave to intervene in *Claudia Duarte Agostinho and Others v Portugal and 33 Other States* stems from these motivating concerns. This is the first time that OCT has requested leave to intervene in a case before the European Court of Human Rights ("Court").

2. The Case Before the Court

Claudia Duarte Agostinho and Others v Portugal and 33 Other States is a case that concerns 33 Member States' liability for emitting greenhouse gases which has led to dangerous climate change and corresponding impacts to Applicants' health and living conditions. Specifically, Applicants claim that these 33 States have failed to abide by their positive obligations under Articles 2, 8, and 14 as well as Article 1 of Protocol No. 1 of the European Convention on Human Rights ("Convention"). The Court has presented the following questions to the Parties:

- (1) Are the Applicants subject to the jurisdiction of the defendant States within the meaning of Article 1 of the Convention given, among others, the commitments taken owing to the ratification of the signature of the 2015 Paris Agreement?
- (2) If so, can the Applicants be considered to be current or potential victims of a violation of one of the rights of the Convention owing to the greenhouse gas emissions emanating from the 33 defendant States, in the meaning of Article 34 of the Convention?
- (3) If so, is there a violation in this case of Articles 2, 3, and 8 of the Convention, taken in isolation and combined with Article 14 as well as Article 1 of Protocol No. 1 of the Convention?

3. OCT's Proposed Intervention

Given its extensive expertise in climate litigation and policy, children's rights, and climate science, OCT is well-positioned to assist the Court in this case.

In particular, OCT can help the Court in answering Question 3 as it relates to the rights articulated in Articles 2, 3, 8 and 14 as well as Article 1 of Protocol No. 1 of the Convention. OCT has a wide breadth and depth of knowledge in climate change science and in how climate change is likely to affect young people's right to life (Article 2); to protection of family life, home, and privacy (Article 8); and to the peaceful enjoyment of property (Protocol No. 1 Article 1). OCT works in partnership with some of the world's top climate scientists who have testified in OCT's cases that global warming must be limited to no more than 1°C by the end of the century in order to avoid catastrophic impacts from climate change. In collaboration with these scientists and other experts, we have amassed comprehensive information about how these impacts will specifically affect today's young people as well as future generations. OCT's expertise on human rights law is also relevant in this context as it speaks to the responsibilities of the Member States to uphold the rights of young people under the Convention.

Relatedly, OCT can provide its expertise on state liability for extraterritorial greenhouse gas emissions both within the United States legal system and elsewhere. Currently, governments' greenhouse gas emissions are on a trajectory to vastly exceed the atmospheric limits required to provide young people with a viable atmosphere and a safe climate. OCT can inform the Court about how Member States' use of discounting in governmental decision making processes as well as their endorsements of politically based, as opposed to scientifically based, planetary heating targets specifically marginalize young people and future generations. These insights are relevant for the Court's consideration of Question 3 in relation to young people's rights under Article 2, Article 8, and Protocol No.1 Article 1 of the Convention as well as their rights not to be treated inhumanely or degraded (Article 3) and not to be discriminated against because of their youth (Article 14).

In addition, OCT can produce an analysis of the justiciability requirements for youth-driven climate change cases it has litigated around the world. Our expertise in this area will provide the Court with crucial insight in resolving Question 2 and will likely touch on issues raised under Question 3 as well.

4. Conclusion

OCT respectfully requests leave to intervene in *Claudia Duarte Agostinho and Others v Portugal and 33 Other States* for the reasons outlined above. Our intervention would refrain from commenting upon the facts or merits of this case or any other case. We would be pleased to provide any additional information the Court may require in service to this request.

Sincerely,



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