WAHL-LARSEN
ADVOKATFIRMA

GLITTERTIND

The Registrar
European Court of Human Rights
Council of Europe
F-67074 Strasbourg Cedex
France

Oslo, 15 June 2021

New Application: [redacted] Natur og Ungdom Greenpeace Nordic, v Norway and request under Rule 41 (priority)

Dear Registrar,

Please find enclosed our clients' application form, supporting documents and appendices. The application concerns Greenpeace Nordic, Natur og Ungdom (the youth branch of the Norwegian chapter of Friends of the Earth Norway, an environmental youth organisation in Norway with about 8,000 individual members and 60 local groups across Norway), and 6 young individual applicants whose rights to life and private and family life are directly affected by climate change, following from expansion of oil and gas extraction in the Arctic (Barents Sea). The application is brought after having exhausted national remedies, with the latest decision from the Norwegian Supreme Court judging in favor of Norway on 22 December 2020, and within the deadline of 6 months from their decision.

Under Rule 41 of the Rules of the Court, we request that the Court expedites this application, as its contents reflect Categories I, II and III of the Court's Priority Policy. We ask that this is done in recognition of the extreme urgency of this application and the profound threats to the physical integrity and dignity of the Applicants. Climate change is perhaps the most pressing emergency faced by humanity and it is already impacting and posing a particularly serious, substantial and urgent risk to the Applicants, who are young persons who already suffer harm and face disproportionate and increased risks of harms and irreversible impacts in the future. We respectfully request the Court to expedite this application as it raises an important question of general interest that could have major implications for domestic legal systems and European system. Despite the Court's existing jurisprudence on violations to the Convention stemming from adverse environmental factors, the Court has yet to address the specific and unprecedented human rights violations originating from climate impacts. Indeed, Respondent's Supreme Court dismissed Applicants' "common ground" argument, because: "the ECHR has no separate environmental provision." As cases addressing climate impacts and concomitant violations of rights increase, domestic European courts could greatly benefit from this Court deciding such a case.

For the Application for priority under Rule 41, paras 2, 3, 6, 18-22, 26 of the application are the most pertinent.

Yours truly,

Cathrine Hambro
Lawyer - Wahl-Larsen Advokatfirma AS

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advokat

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Lawyer- Advokatfirma Glittertind AS

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B. State(s) against which the application is directed

17. Tick the name(s) of the State(s) against which the application is directed.

- [ ] ALB - Albania
- [ ] AND - Andorra
- [ ] ARM - Armenia
- [ ] AUT - Austria
- [ ] AZE - Azerbaijan
- [ ] BEL - Belgium
- [ ] BGR - Bulgaria
- [ ] BIH - Bosnia and Herzegovina
- [ ] CHE - Switzerland
- [ ] CYP - Cyprus
- [ ] CZE - Czech Republic
- [ ] DEU - Germany
- [ ] DNK - Denmark
- [ ] ESP - Spain
- [ ] EST - Estonia
- [ ] FIN - Finland
- [ ] FRA - France
- [ ] GBR - United Kingdom
- [ ] GEO - Georgia
- [ ] GRC - Greece
- [ ] HRV - Croatia
- [ ] HUN - Hungary
- [ ] IRL - Ireland
- [ ] ISL - Iceland
- [ ] ITA - Italy
- [ ] LIE - Liechtenstein
- [ ] LTU - Lithuania
- [ ] LUX - Luxembourg
- [ ] LVA - Latvia
- [ ] MCO - Monaco
- [ ] MDA - Republic of Moldova
- [ ] MKD - North Macedonia
- [ ] MLT - Malta
- [ ] MNE - Montenegro
- [ ] NLD - Netherlands
- [x] NOR - Norway
- [ ] POL - Poland
- [ ] PRT - Portugal
- [ ] ROU - Romania
- [ ] RUS - Russian Federation
- [ ] SMR - San Marino
- [ ] SRB - Serbia
- [ ] SVK - Slovak Republic
- [ ] SVN - Slovenia
- [ ] SWE - Sweden
- [ ] TUR - Turkey
- [ ] UKR - Ukraine

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58.

INTRODUCTION (Additional submission "AS" section 1.1)
This case is brought by six young Norwegians and two organisations whose members' lives, health and well-being are directly affected by the escalating climate crisis.

As young adults, the six individual Applicants are disproportionately affected by the climate crisis. Considering the seriousness and urgency of the climate crisis, and the limited time remaining to avert its most serious and irreversible impacts, the Respondent has failed to take precautionary measures of prevention and protection required of it under ECHR Articles 2 and 8. The result of the domestic court process also represents a breach of Article 14.
The Norwegian courts failed to adequately assess the Applicants' Convention claim. The Respondent thus also failed to secure their access to an effective domestic remedy under Article 13.

By licensing continuing exploration for oil and gas in new areas of the Arctic (Barents Sea), the Respondent aims to bring new fossil fuels to market from 2035 and beyond, even though the best available science shows that the emissions from already proven reserves of fossil fuels exceed the remaining carbon budget, given the 1.5℃ temperature target set in the Paris Agreement, increasing the risk that global warming surpasses the 1.5℃ limit.

In 2016, Applicants 7–8 brought a case against the Respondent's decision to grant 10 licences in the Barents Sea. In its judgment of 22 December 2020, the Norwegian Supreme Court (NSC) ruled that this decision did not violate the right to a healthy environment provided by Article 112 of the Norwegian Constitution. Based on a limited and incorrect application of ECtHR jurisprudence, the NSC found no violation of the Convention. The NSC did find that climate impacts (including emissions from combustion after export, "exported emissions") should have been assessed, but that this could be remedied at the development stage (after licences have been issued). (Norwegian petroleum permission procedure has three stages: 1) opening; 2) licensing; and 3) Plan for Development and Operation ("PDO")). 4 dissenting judges (of 15 total) found the lack of such assessment to be in violation of the EU directive 2001/42/EC ("SEA directive") and voted for 3 of the licences to be invalid.

This situation represents a real and serious risk to the Applicants' lives and well-being, and the ability to enjoy their private life, family life and home safely. The Respondent has failed to adopt necessary and appropriate measures to address this risk. The Respondent has further failed to declare, describe and assess total climate effects, including exported emissions, of the continued and expanded extraction, thereby also violating the Applicants' rights.

THE GLOBAL CLIMATE CRISIS HAS SEVERE EFFECTS FOR THE APPLICANTS (AS section 1.2)
The individual Applicants (Applicants 1–6) experience climate anxiety, emotional distress and worry greatly about the current and imminent risks of serious climate effects in Norway, and how this will impact their lives, life-choices, and the lives of future generations (see annex 1-6). Their concerns are underscored by key UN Human Rights Treaty Bodies. Mental health literature increasingly draws attention to such concerns, which one British Medical Journal article refers to as "pre-traumatic stress." Many young Norwegians are acutely aware of the threats and urgency posed by climate change. Nature and Youth's members increasingly report suffering from climate-related anxiety and fear for their future lives and livelihoods.

THE GLOBAL CLIMATE CRISIS HAS SEVERE EFFECTS IN NORWAY (AS section 1.3)
With current climate policies, the average temperature in Norway is expected to rise by 5.5ºC by 2100. Respondent's own Climate Risk Commission stated that the climate in Norway is getting "hotter, more humid and more ferocious". Since 1990, an 18 % increase in extreme rainfall events has been recorded, as well as an increase in flooding and landslides. Future impacts will include increased risk of drought and forest fire-inducing thunderstorms, an increase in extreme

Statement of the facts (continued)

59.
rainfall events, changes to flood systems, sea level rise and ocean acidification, the latter detrimental to marine species and ecosystems, affecting fisheries and coastal communities.

THE RESPONDENT IS FAILING TO PROTECT APPLICANTS FROM CLIMATE HARM, FAILING TO PROVIDE EFFECTIVE REMEDIES AND ACCELERATING CLIMATE-INDUCED RISK (AS section 1.4)
The Respondent has endorsed the scientific consensus that warming of 1.5°C or higher above pre-industrial levels constitutes "dangerous anthropogenic interference with the climate system". Keeping warming below 1.5°C, as established by the best available science and codified in the Paris Agreement, will require swift, substantial reductions in greenhouse gas emissions worldwide.

The Intergovernmental Panel on Climate Change (IPCC) has developed the concept of the "carbon budget", referring to the remaining CO2 equivalents that may be emitted before the 1.5ºC limit is passed. According to this budget global emissions must be reduced by at least 50 % by 2030 and "net zero" must be achieved by 2050.

There is a significant difference between planned fossil fuel extraction and climate goals, "the production gap". In its recent report, the International Energy Agency (IEA) assumes that, in order for pathways to be 1.5°C consistent, "beyond projects already committed as of 2021, there are no new oil and gas fields for development in our pathway (...)". For Norway as a petroleum producer, this requires a substantial economy-wide change. During the NSC hearing, the Respondent's representatives stated that Norway will produce and export petroleum as long as there are buyers. Norway extracts oil and gas equivalent to approximately 500 million tons of CO2 of exported emissions annually, making Norway the 7th largest exporter of emissions in the world, and the 3rd largest per capita, behind Qatar and Kuwait.

The Respondent opened the Barents Sea South-East (BSSE) for exploration on 26 April 2013. On 10 June 2016, ten days before ratifying the Paris Agreement, Norway issued 10 licences in the 23rd licensing round. 3 licences were in BSSE, and 7 were in the Barents Sea South (BSS) opened in 1989.

The preparatory works presented before the opening of the BSSE, and before the opening of BSS, did not declare or assess the CO2 emissions from combustion of extracted and exported fossil fuels. Norway has no system in place to declare, assess, calculate, or reduce exported emissions from fossil fuels extraction projects, nor the exported emissions from oil and gas extraction overall.

Following the decision to grant licences, Applicants 7–8 initiated legal proceedings, claiming that the licences issued were invalid. In its judgment of 22 December 2020, the NSC dismissed the appeal by a majority of 11, against 4. The NSC ruled that the government had not violated its Constitutional or Convention obligations. The NSC dismissed the "common-ground" approach because "the ECHR has no separate environmental provision" (NSC judgment § 174).

The 4 dissenting judges of the NSC found that the impact assessment did not fulfil the requirements of the SEA directive and voted to declare the licences in BSSE invalid. The majority held that any deficiencies could be remedied later, at the Plan for Development and Operation (PDO) stage.

Applicants claim that the NSC judgment removes the duty to conduct an impact assessment of Norway's exported emissions, which constitute 95% of the total emissions from fossil fuels extraction, and which Norway is in a position to control by integrating the findings in decisions at the planning stage.

Statement of the facts (continued)

60.

- Please ensure that the information you include here does not exceed the space provided -

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
Article 34 in relation to Articles 2 and 8	VICTIM STATUS (AS section 2) Applicants 1–6 are "directly affected" (Burden v UK § 33) by the climate crisis and face increased risk of harm and irreversible impacts in the future. They are potential victims as the risk of harm determines the victim status (i.e., Taşkin v Turkey § 114, cf. § 104). Applicant 7 represents the sum of interests of all its members. The organisation "as a collective body has been an accessible, and arguably the only means to defend their common interests effectively" (Gorraiz Lizzarga and others v Spain § 38). Licencing of fossil fuels extraction is a too complex administrative decision for individuals and young people to challenge alone. Applicant 8, on behalf of its members, is better resourced and suited to challenge such decisions. If Applicants 7–8 are not recognised as victims, the full range of consequences of the Respondent's violations of its obligations under Articles 2 and 8, risk becoming "unchallengeable" while the means of prevention are still available (Compare Klass v Germany § 36). Applicants 7–8 represent future generations (compare with Centre for Legal Resources on Behalf of Valentin Câmpeanu v Romania §§ 104-114 with regards to vulnerable individuals).
Articles 2 and 8	STARTING POINTS (AS section 3.1-3.2) All public and private actions (licensing, exploration, drilling, extraction, production, promotion, marketing and export) required for fossil fuels extraction are subject to Norwegian laws and licensing processes. Such actions fall within Norwegian jurisdiction. Respondent violates Articles 2 and 8 because Applicants suffer a real and immediate risk and/or serious and substantial risk to these rights, while the State knew or ought to have known about the risks and has failed to adopt reasonable and appropriate measures to prevent the risk. Prevention is key, otherwise "the rights of the Applicants would be set at naught" (Taşkin v Turkey § 115.) The state is required to "put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life" (Önerylidiz v Turkey § 89). Any regulation must be appropriate to the activity and based on environmental reports (Jugheli v Georgia § 76-77). In relation to harmful activities, the Court must "scrutinise the decision-making process to ensure that due weight has been accorded to the interest of the individual (Taşkin v Turkey § 115). As the younger generations, and those unborn, carry an unequal burden related to climate change and the licensing, States must use "detailed and rigorous data, in a situation in which certain individuals bear a heavy burden on behalf of the rest of the community." (Jugheli v Georgia § 73).The process as such must enable decision-makers to "predict and evaluate in advance the effects of those activities which might damage the environment" as "the importance of public access to the conclusions for such studies and to information which could enable members of the public to assess the dangers to which they are exposed is beyond question." (Taşkin v Turkey § 115). The EU/EEA SEA Directive and EIA Directive are part of a legal common ground. APPLICATION (AS section 3.3) The effects and the increased risk following severe climate change that the licences induce constitute a "real" and "serious and substantial risk to health and well-being" (Tatar v Romania § 107) that represents "an ecological risk [that] reaches a level of seriousness which significantly diminishes the applicant[s'] ability to enjoy [their] home[s] or private or family life" (Cordella v Italy § 157). The risk increase from new licences is real. The reality and urgency of this threat to life and wellbeing must be understood in context of the obligation undertaken in the Paris Agreement Article 3 to "to reach global peaking in greenhouse gas emissions as soon as possible (...) and undertake rapid reductions thereafter." The risk increase occurs when licences are issued since their purpose is extraction of oil and gas. Increased risk from extraction of oil and gas after 2030, brings the situation to the "level of severity necessary to bring the complaint under the ambit of Article 8"

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked	Explanation
Articles 2 and 8 continued	(Dubetska v Ukraine § 119). Recalling the preventive nature of the Convention, its purpose as a "living instrument", its applicability to "present day conditions" (Demir and Baykara v Turkey §§ 66, 107) the threats against the Applicants' rights are ongoing since the obligations on the Respondent refers to the point in time when the authorities must act to prevent the potential harm. Since the temperature increase cannot be reversed, preventive action must be taken now. Respondent has no laws or regulations regarding exported emissions. No Norwegian law requires the development of a plan to transition away from the production of fossil fuels in line with the emission trajectories developed by the IPCC in order to remain below the 1.5ºC limit. The Respondent has no plan for how much of the remaining carbon budget should be expended by the combustion of Norwegian oil and gas. The effects of exported emissions – that represent 95 % of total emissions from oil and gas extracted from the Norwegian continental shelf. The Respondent has not communicated as part of its impact assessment before the licences were granted: 1) the total future estimated emissions from the combustion of oil and gas from the licensing in 2016, and related effects, 2) how much of the global carbon budget will be used up by exported emissions from Norwegian oil and gas and 3) how emissions from oil and gas being brought to market from 2035 onwards are consistent with agreed temperature targets, and the required emissions reduction trajectories. The lack of assessment of such factors is a violation of the Respondent's obligations under the SEA Directive. Omitting the full climate effects rendered the Applicants unable to fully assess the risks to which they were exposed (Taşkin v Turkey § 119), and deprived all Applicants of essential specific data and impaired their ability to inform and participate in the public discourse on the climate crisis which in itself constitutes a violation of Articles 2 and 8.
	VIOLATION OF ARTICLES 13 AND 14 (AS section 3.4-3.5)
Article 13 combined with Article 2 and 8	Article 13: The right to an effective remedy requires a substantive and rigorous review of an arguable claim and remedies that are adequate to address the nature of the wrongs in a timely manner (Council of Europe (31 December 2020), Guide on Article 13.) The Norwegian courts did not assess the merits of the Convention claims in full and based on ECtHR case law (Hatton v UK § 141). The NSC's determination that emissions reductions may be deferred to the PDO stage failed to meet the obligation of promptness which guarantees an effective remedy (Çelik and İmret v Turkey § 59).
Article 14 combined with Article 2 and 8	A violation of Article 14 may occur indirectly as a consequence of "a general policy or measure that has disproportionately prejudicial effects on a particular group [...] even where it is not specifically aimed at that group and there is no discriminatory intent." (S.A.S v France § 161) Indirect discrimination may arise from a neutral rule or a de facto situation (Zarb Adami v Malta § 76) Age is a prohibited discriminatory ground under Article 14 Schwizgebel v Switzerland § 85). Applicants 4 and 6 are members of the indigenous Sami minority, whose traditions, land and resources are negatively impacted by the acts and omissions complained of. Applicants 1–6 are all young individuals. All members of Applicant 7 are between 13 and 25 years old who are victims of indirect and disproportionate discrimination due to the licencing decision. Applicants 1–6 will be increasingly impacted by climate change – and the licensing decision in 2016 – throughout their lives. Applicants 1–6 had no opportunities to participate in the decision-making while at the same time having to shoulder a heavier burden when being required to tackle the hardest and most long-lasting consequences.

G. Compliance with admisibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

63. Complaint	Information about remedies used and the date of the final decision
	The NSC judgment is dated 22nd December 2020. No appeal is available in Norway. The Applicants have complied with the 6 months rule. Applicant 7 and 8 have been parties to the case before all levels of court and have exhausted the available domestic remedies. The individual Applicants are members or former members of Applicant 7. Since the organisation has the right to initiate proceedings before the national courts, they have not initiated individual proceedings. Applicant 7 has exhausted the remedies available to them (Gorraiz Lizzarga v Spain § 39). The members have been actively involved in the case at all instances. For all practical purposes, the litigation corresponds "exactly" with the Applicants' complaints (Kosa v Hungary, App No 53461/15, § 59). It is especially important to secure an effective legal avenue for youth and young adults in cases regarding climate change. This is a situation where "access to justice for members of such groups should be facilitated to provide effective protection of rights." (Kosa v Hungary § 57). In addition, there is no effective domestic remedy available to these Applicants. The NSC's reasoning shows that such proceedings would have "no prospect of success" (Open Door and Dublin Well Woman v. Ireland § 50). Further, given the NSC judgment in relation to the 23rd licensing round, no effective domestic remedy exists in relation to the 24th and 25th licensing rounds.

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Additional Submission

1. STATEMENT OF FACTS

1.1 Introduction

1. This case is brought by six young Norwegians and two organisations whose members' lives, health and well-being are directly affected by the climate crisis.

2. As young adults, the six individual Applicants are disproportionately affected by the climate crisis. Considering the seriousness and urgency of the climate crisis, and the limited time remaining to avert its most serious and irreversible impacts, Respondent has failed to take precautionary measures of prevention and protection required of it under ECHR Articles 2 and 8. The result of the domestic court process also represents a breach of Article 14. The Norwegian courts failed to adequately assess the Applicants' Convention claim. Respondent thus also failed to secure their access to an effective domestic remedy under Article 13.

3. By licensing continuing exploration for oil and gas in new areas of the Arctic (Barents Sea), Respondent aims to bring new fossil fuels to market from 2035 and beyond, even though the best available science shows that the emissions from already proven reserves of fossil fuels exceed the remaining carbon budget, given the 1.5°C temperature target set in the Paris Agreement, *increasing the risk* that global warming surpasses the 1.5°C limit.

4. In 2016, Applicants 7–8[1] brought a case against Respondent's decision to grant 10 licences in the Barents Sea.[2] In its judgment of 22 December 2020, the Norwegian Supreme Court (NSC) ruled that this decision did not violate the right to a healthy environment provided by Article 112 of the Norwegian Constitution. Based on a limited and incorrect application of ECtHR jurisprudence, the NSC found no violation of the Convention. The NSC did find that climate impacts (including emissions from combustion after export, hereafter "exported emissions") should

[1] The Grandparents Climate Campaign intervened before the District Court and has filed a separate complaint to the ECtHR. Friends of the Earth Norway intervened before the Court of Appeal

[2] The licences are for "extraction", cf. Norway's Petroleum Act 1996, s 3-3 (Annex 32)

have been assessed, but that this could be remedied at the development stage (after licences have been issued).[3] 4 dissenting judges (of 15 total) found the lack of such assessment to be in violation of the EU directive 2001/42/EC ("SEA directive") and voted for three of the licences to be invalid.[4]

5. Respondent has failed to adopt necessary and appropriate measures to address the risk of the climate crisis. Respondent has further failed to declare, describe and assess total climate effects, including exported emissions, of the continued and expanded extraction, thereby also infringing the Applicants' rights.

1.2 The global climate crisis has severe effects for the Applicants

6. The individual Applicants (1–6) experience climate anxiety, emotional distress and worry greatly about the current and imminent risks of serious climate effects in Norway, and how this will impact their lives, life-choices, and the lives of future generations.[5] Their concerns are underscored by key UN Human Rights Treaty Bodies.[6] Mental health literature increasingly draws attention to such concerns, which one British Medical Journal article refers to as "pre-traumatic stress."[7]

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[3] Petroleum permitting has three stages: 1) opening; 2) licensing; and 3) Plan for Development and Operation ("PDO"). See Petroleum Act (Annex 32) section 3-1; 3-3; 3-5 and 4-2 respectively, and Petroleum Regulation (Annex 31)

[4] "Exported" emissions constitute approximately 95% of total emissions from fossil fuel extraction, based on comparing Gavenas et al (2015) ('CO2-emissions from Norwegian oil and gas extraction', Energy, 90(2), p. 1956: https://doi.org/10.1016/j.energy.2015.07.025) and IPCC estimates (BP (2019) "Methodology for calculating CO2 emissions from energy use": https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-carbon-emissions-methodology.pdf). These emissions are sometimes referred to as "downstream emissions"

[5] See judgment from the German Constitutional Court, BVerfGE, 1 BvR 2656/18, Neubauer, et al. v. Germany, 24 March 2021, §§ 186, 192 and 204: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/03/rs20210324_1bvr265618.html

[6] Joint Statement of Five UN Human Rights Treaty Bodies on Human Rights and Climate Change: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E

[7] Susteren V (2020) 'Our children face 'pretraumatic stress' from worries about climate change', BMJ Opinion: https://blogs.bmj.com/bmj/2020/11/19/our-children-face-pretraumatic-stress-from-worries-about-climate-change/; Clemens V (2020) 'Report of the intergovernmental panel on climate change: implications for the mental health policy of children and adolescents in Europe—a scoping review', European Child & Adolescent Psychiatry: https://doi.org/10.1007/s00787-020-01615-3; Harvard School of Public Health 'Climate Change and Mental Health' : https://www.hsph.harvard.edu/c-change/subtopics/climate-change-and-mental-health/

7. Young Norwegians are acutely aware of the threats and urgency posed by climate change. Natur og Ungdom's members increasingly report suffering from climate-related anxiety and fear for their future lives and livelihoods.[8]

8. Applicant 2 states that the situation "exposes my life, and other young people's lives and well-being to a great and unacceptable risk," asserting that the Norwegian government: "is not only failing to protect my human rights to life and well-being from the threats of climate change, they are actively putting my human rights under threat by acting contrary to climate science." Applicant 2 further explains: "my partner and I are at an age where we are starting to think about having children. This thought-process and decision is impacted by the fact that I worry about how my future children's life will be affected by climate change."

9. Applicant 4 worries about the current impacts of climate change on biodiversity, and the traditional way of life in her home region in northern Norway. Climate change is already impacting on her family and community's ability to use the land and resources in the traditions of the Sami indigenous people.

10. Applicant 5 has suffered from climate anxiety and emotional distress due to climate change and the government's lack of response, resulting in "periods of depressive thoughts", and having to leave the classroom when climate change was on the curriculum.

11. Applicant 6 is "deeply worried" about the effects of climate change in Norway and highlights the climate impacts on his Sea Sámi culture and how these will become more severe in the future.

12. The climate crisis affects Applicant 3's life and work choices: "which education I will pursue, (...) and many other choices about my future".[9]

[8] Applicant 1's written statement of evidence to the Norwegian Supreme Court (Annex 23)
[9] Full descriptions of the impacts on the Applicants in Annexes 1–6

13. Applicants 1–6 have all worked actively on the case before the domestic courts as members and representatives of Natur og Ungdom.[10,11]

14. Applicant 7 (Natur og Ungdom) is Norway's largest environmental organisation for youth and young adults. The organisation is autonomous and democratic, and founded in 1967. It has around 8000 members, participating in 60 local groups in communities around the country. Their purpose is to work for a long-term management, protection, and more equitable allocation of the world's resources, by opinion-shaping activities and activism among young people.[12]

15. Applicant 8 (Greenpeace Nordic) is an independent entity whose mission is to secure the earth's ability to nurture life on earth in all its diversity. Greenpeace has been present in Norway since 1988. Greenpeace is a global network of independent national and regional organisations, funded by individual contributions and grants and Greenpeace International is a coordinating organisation.[13] Greenpeace does not receive money from governments, corporations, or political parties.[14]

1.3 The global climate crisis has severe effects in Norway

16. With current climate policies, the average temperature in Norway is expected to rise by 5.5ºC by 2100.[15] The risk of passing "tipping points" increases significantly

[10] Individuals above 25 years of age are automatically excluded from the organization

[11] As chairs, Applicant 1–2 represented and testified on behalf of the organisation and its members in the Supreme Court and Court of Appeal, and the District Court, respectively, see testimonies in Annexes 14 and 23

[12] Natur og Ungdom's articles of association are attached in Annex 10

[13] The Greenpeace network consist of 26 national and regional organisations in 55 countries

[14] "Our Structure", *Greenpeace International*: https://www.greenpeace.org/international /explore/about/structure/. Greenpeace Nordic's articles of association are attached in Annex 11.

[15] See Climate Risk Commission (2018) 'Climate Risk and the Norwegian Economy', NOU 2018/17, pp. 41-46: https://www.regjeringen.no/en/dokumenter/nou-2018-17/id2622043/ Consistent with the IPCC 1.5ºC report, finding that "Warming greater than the global annual average is being experienced in many land regions and seasons, including 2-3 times higher in the Arctic". IPCC (2018) 'Special Report On 1.5C', Summary for Policymakers, p. 4, § A.1.2. Current global temperature rise has already "resulted in profound alterations to human and natural systems, including increases in droughts, floods, and some other types of extreme weather; sea level rise; and biodiversity loss (…) causing unprecedented risks to vulnerable persons and populations" p. 53, § 1.1: https://www.ipcc.ch/sr15/download/

between 1ºC and 2ºC warming.[16] Science shows that keeping warming below 1.5°C is necessary to prevent dangerous, cascading climate impacts, which will impair Convention rights.[17]

17. Respondent's own Climate Risk Commission stated that the climate in Norway is getting "hotter, more humid and more ferocious".[18] An 18 % increase in extreme rainfall events has been recorded since 1990, as well as an increase in flooding and landslides. Future impacts include increased risk of drought and forest fire-inducing thunderstorms, an increase in extreme rainfall events, changing flood systems, sea level rise and ocean acidification. The latter is detrimental to marine species and ecosystems, affecting fisheries and coastal communities. The heat wave of 2018 impacted Norwegian agriculture severely, inducing an increase in the import share of consumed grain to 70%, a record high.[19] Higher temperatures expose Norwegians to shortages of food supply due to the heavy reliance on imports[20]. This is a source of distress to Applicants, as described by Applicants 1 and 3.

1.4 Respondent is failing to protect Applicants from climate harm, failing to provide effective remedies and accelerating climate crisis-induced risk

18. Respondent has endorsed the scientific consensus that warming of 1.5°C or higher above pre-industrial levels constitutes "dangerous anthropogenic interference with the climate system".[21] Keeping warming below 1.5°C, as established by the best available science and codified in the Paris Agreement, will require swift, substantial reductions in greenhouse gas emissions worldwide.

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[16] Tipping points are thresholds where a chain of smaller changes can push a system into a new state. IPCC 'Special Report On 1.5C' (supra n.15), pp. 262–264, § 3.5.5

[17] IPCC 'Special Report On 1.5C' (supra n.15), p.5, § A.3.2. See also p.8-10, §§ B.4-B.5: "[W]arming of 1.5C is not considered "safe" especially for "vulnerable populations" p. 447

[18] Climate Risk Commission (supra n.15), p. 15

[19] Landbruk.no (28 September 2018) "Norway is completely dependent on imported food": https://www.landbruk.no/internasjonalt/i-dag-er-norge-helt-avhengig-av-importert-mat/

[20] IPCC (2019) 'Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems" p.459,: https://www.ipcc.ch/srccl/chapter/chapter-5/

[21] United Nations Framework Convention on Climate Change (UNFCCC), 9 May 1992,1771 U.N.T.S. p. 107, art 2

19. The Intergovernmental Panel on Climate Change (IPCC) has developed the concept of the "carbon budget", referring to the remaining CO2 equivalents that may be emitted before 1.5ºC is passed. According to this budget global emissions must be reduced by at least 50 % by 2030 and "net zero" must be achieved by 2050.[22]

20. There is a significant gap between planned fossil fuel extraction and climate goals, "the production gap".[23] The International Energy Agency (IEA) assumes that, for pathways to be 1.5°C consistent, "beyond projects already committed as of 2021, there are no new oil and gas fields for development in our pathway (…)".[24]

21. For Respondent as a petroleum producer, this requires a substantial economy-wide change. During the NSC hearing, Respondent's representatives stated that Norway will produce and export petroleum as long as there are buyers.[25]

22. Norway extracts oil and gas equivalent to approximately 500 million tons of CO2 in exported emissions annually, making Norway the 7th largest exporter of emissions in the world,[26] and the 3rd largest per capita,[27] behind Qatar and Kuwait.

23. Respondent opened the Barents Sea South-East (BSSE) for exploration on 26 April 2013. On 10 June 2016, ten days before ratifying the Paris Agreement, Respondent

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[22] IPCC 'Special Report On 1.5C' (supra n.15), Chapter 2, p. 96, § 2.2.2 et seq

[23] According to UNEP, aggregate, planned global fossil fuel extraction will lead to emissions that are 120 % above 1.5°C consistent pathways by 2030. By 2040 levels exceed 1.5ºC pathways by 210%. SEI, IISD, ODI, Climate Analytics, CICERO, and UNEP (2019). "The Production Gap", pp. 4, 8, 9, 13-14: http://productiongap.org/. (Hereinafter "The Production Gap Report")

[24] 'The Production Gap Report (supra n.23), pp. 8-9; The International Energy Agency (IEA) Report recently declared: that "beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway (…)", IEA (2021) 'Net Zero by 2050: A Roadmap for the Global Energy Sector', p.21: https://www.iea.org/reports/net-zero-by-2050

[25] Supreme Court of Norway in plenary, HR-2020-2472-P, *Nature and Youth, Greenpeace Nordic v. The State by Ministry for Petroleum and Energy*, 22 December 2020, (hereinafter "NSC judgment"), Annexes 24–25; Day 4 of the proceedings at timestamp 3:49:50: https://www.xn--klimasksml-95a8t.no/2020/11/06/praktisk-informasjon-om-klimasoksmalet/

[26] Mckinnon H (2017) 'The Sky's Limit Norway: Why Norway Should Lead the Way in a Managed Decline of Oil and Gas Extraction', Oil Change International, p.3: http://priceofoil.org/2017/08/09/the-skys-limit-norway-why-norway-should-lead-the-way-in-a-managed-decline-of-oil-and-gas-extraction/

[27] Andrew R et al (2013) 'Climate policy and dependence on foreign carbon': https://iopscience.iop.org/article/10.1088/1748-9326/8/3/034011

issued 10 licences in the 23rd licensing round.[28] 3 licences were in BSSE, and 7 were in the Barents Sea South (BSS), opened in 1989.

24. The preparatory works presented before the opening of the BSSE, and before the opening of BSS, did not declare or assess the CO2 emissions from combustion of extracted and exported fossil fuels. Norway has no system in place to declare, assess, calculate, or reduce exported emissions from fossil fuels extraction projects, nor the exported emissions from oil and gas extraction overall.[29]

25. Following the decision to grant licences, Applicants 7–8 initiated legal proceedings, claiming that the licences issued were invalid. The District Court delivered its judgment on 4 January 2018, and the Appeals court on 23 January 2020.[30] The decision was appealed to the NSC. In its judgment of 22 December 2020, the NSC dismissed the appeal by a majority of 11, against 4.

26. The NSC ruled that the government had not violated its Constitutional or Convention obligations. The NSC dismissed the "common-ground" approach because "the ECHR has no separate environmental provision."[31]

27. The 4 dissenting judges found that the impact assessment did not fulfil the requirements of the SEA directive and voted to declare the licences in BSSE invalid. The majority held that any deficiencies could be remedied later, at the Plan for Development and Operation (PDO) stage.

28. Applicants claim that the NSC judgment removes the duty to conduct an impact assessment of Norway's exported emissions, which constitute 95% of the total emissions from fossil fuels extraction, and which Norway is able to control by integrating the findings in decisions at the planning stage.

[28] Some of the licences issued have been returned due to dry wells

[29] Norway's domestic emissions were reduced by 2.9% in 2020 compared to 1990 levels. EU and Sweden reduced emissions by 24 % and 29 % respectively, over the same period. Fossil fuel expansion explains the lack of reduced emissions

[30] The judgments are attached in the Annexes 15–16 and 19–20

[31] NSC judgement (supra n.25), § 174

29. The NSC only assessed the lack of impact assessment for the licences in BSSE. However, this conclusion affects the 7 licences in the BSS, which were also part of the case. No such impact assessment was undertaken prior to the opening of the BSS in 1989.[32]

2. THE APPLICANTS' VICTIM STATUS

2.1 Applicants 1–6 are "victims" under Articles 2 and 8

30. A "victim" must "be able to make out a case that he or she is the victim of a violation of the Convention",[33] and that a violation is "conceivable".[34] The concept must be "interpreted in an evolutive manner" to avoid the protection guaranteed by the Convention becoming "ineffectual and illusory".[35]

31. Applicants 1–6 are *directly affected* by Respondent's actions.[36] They experience emotional distress, fear for the future, and their life-choices are affected by the climate crisis (section 1.2). They already suffer harms and face increased risk of harm and irreversible impacts in the future. They are *directly affected* by Respondent's failure to complete a sufficient impact assessment, including full climatic effects at opening and licensing (including subsequent licensing rounds).[37]

32. Applicants 1–6 are *potential* victims of future impacts of climate change in Norway (section 1.3). The *risk of harm* determines whether an applicant can claim to be victim of a violation. The Court has found a violation of Article 8 where the harm could potentially occur over a period of 20–50 years,[38] and recognized potential

[32] The conclusion is valid for subsequent 24th and 25th licencing rounds. 12 licences have been issued in the 24th round, and further licences are expected in the 25th licensing round

[33] Gorraiz Lizarraga and others v. Spain, App No 62543/00, 27 April 2004, § 53

[34] Brumărescu v. Romania (GC), App No 28342/95, 28 October 1999, § 50

[35] Gorraiz Lizarraga and others v. Spain (supra n.33), § 38. Court's assessment must engage with the precautionary principle, intergenerational equity, and Article 3(1) of the UN Convention on the Rights of the Child, see Neulinger v Switzerland (GC) App No 41615/07, 6 July 2010, § 132.

[36] i.e., Burden v. United Kingdom (GC) App No 13378/05, 29 April 2008, § 33

[37] See footnote 3 for licencing procedure

[38] Taşkin and others v. Turkey, App No 46117/99, 10 November 2004, § 114, cf. § 104

victims in several other cases.[39]The inherent risks and urgency in the unfolding climate crisis means that states must act now. If Respondent fails to take necessary precautionary measures, the full effects will materialize later, at a time when it is no longer possible to take effective preventive measures. Only in this way can the Convention guarantee rights that are "practical and effective".[40]

33. There is a sufficiently close connection between Respondent's conduct (section 1.4) and the current impacts on the Applicants, as well as the risks of future harm (section 1.2 and 1.3).[41]

34. The Convention protects individuals irrespective of whether the harms affect a larger number of individuals.[42,43] Measures to counter climate change will intrinsically never benefit a certain group exclusively. This application does not concern the general degradation of the environment, but the concrete effects that the impugned conduct has on the Applicants.[44]

2.2 Applicants 7–8 are victims under Articles 2 and 8

35. Applicants 7 and 8 are "nongovernmental organisations" (NGOs) within the meaning of Article 34, and meet the Court's definition of "victim".[45] An NGO must "normally" itself be "directly affected".[46] This is typically applied where there are specific individuals who have or can themselves make an individual application.[47] As the climate crisis regards emissions with both current and future effects, no

[39] e.g., Soering v. Germany, App No 14038/88, 7 July 1989; Klass and others v. Germany, App No 5029/71, 6 September 1978; Roman Zakharov v. Russia (GC), App No 47143/06, 4 December 2015, § 179; Centrum för rättvisa v. Sweden (GC), App No 35252/08, 25 May 2021; Big Brother Watch and others v. United Kingdom (GC), App Nos 58170/13, 62322/14,24960/15, 25 May 2021

[40] e.g., Airey v. Ireland, App No 6289/73, 9 October 1979, § 24

[41] The criterion is not applied in a rigid way, see Roman Zakharov v. Russia (supra n.39), § 164

[42] Cordella and others v. Italy, App Nos 54414/13 and 54264/ 15, 24 January 2019, §§ 97-104; Open Door and Dublin Well Women v. Ireland App Nos 14234/88 and 14235/88, 29 October 1992,§ 44

[43] See Bursa Barosu Başkanlığı and Others v. Turkey, App No 25680/05, 19 June 2019, § 128.

[44] Cordella and others v. Italy (supra n.42), § 101

[45] See, e.g., British Gurkha Welfare Society v. United Kingdom, App No 44818/11, 15 September 2016, § 50; and Vallianatos and others v. Greece (GC), App No 29381/09 and 32684/09, 7 November 2013

[46] British Gurkha Welfare Society v. United Kingdom (supra n.45), § 50

[47] e.g., Vallianatos and others v. Greece (supra n.45)

individual today can themselves make a complaint that encompasses the full scale of the risk to Convention rights.

36. As in cases of secret and mass surveillance, the nature of the risk makes it inherently difficult to point to all who are already affected, or which individuals will be affected in the future.[48] The situation thus "potentially affects all persons" in Norway whose rights will be infringed if temperatures exceed the 1.5°C limit.[49]

37. Younger and future generations will carry the heaviest burden of climate change.[50] Applicant 7 represents this sum of interests on behalf of all its members. The organisation "as a collective body has been an accessible, and arguably the only, means to defend their common interests effectively".[51]

38. Licencing of fossil fuels extraction is a complex administrative decision representing real obstacles for individuals and young people to challenge alone. Applicant 8, on behalf of its members, is better resourced and better suited to challenge such decisions.

39. If Applicants 7–8 are not recognised as victims alongside the individual Applicants, the full range of consequences of Respondent's violations of its Convention obligations risks becoming "unchallengeable" in the limited time wherein the means of prevention are still available.[52]

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[48] e.g., Klass and others v. Germany (supra n.39), § 34; Centrum för rättvisa v. Sweden (supra n.39), § 90-95; Roman Zakharov v. Russia (supra n.39); and Big Brother Watch and others v. United Kingdom (supra n.39). The Norwegian National Institution for Human Rights highlights this parallel in the report "Climate and Human Rights" (2021), § 5.9.3: https://www.nhri.no/en/report/climate-and-human-rights/

[49] Centrum för rättvisa v. Sweden (supra n.39), §§ 169, 175

[50] See the recent Federal Court of Australia case: Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Environment [2021] FCA 560, § 293: https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560

[51] Gorraiz Lizarraga and others v. Spain (supra n.33), § 38

[52] Compare Klass and others v. Germany (supra n.39), § 36; See also European Network of National Human Rights Institutions (ENNHRI) (2021) 'Climate Change and Human Rights in the European Context', § 4.2 (hereinafter "ENNHRI report"): ENNHRI-Paper-Climate-Change-and-Human-Rights-in-the-European-Context_06.05.2020.pdf. NGO standing in such legal proceedings is a cornerstone of the domestic Norwegian legal system, see The Norwegian Dispute Act 2005 section 1-4, and recognized in European legal systems in general, compare with Gorraiz Lizarraga and others v. Spain (supra n.39), § 38 Goodwin v. the United Kingdom (GC), App No 17488/90, 27 March 1996, § 39

40. Applicants 7–8 also represent the interests of future generations. The Court has accepted the rights of NGOs to act on behalf of vulnerable individuals to protect the rights under Articles 2 and 8 in situations where the individual is deceased.[53] The Applicants respectfully allege that the same considerations apply to generations unborn, especially in light of Applicant 7–8's involvement in the domestic proceedings where their standing was accepted.[54]

41. Applicants 7–8 are *directly affected* by the omission of Respondent to conduct an impact assessment of the full climate effects.

3. ARTICLES INVOKED

3.1 Articles 2 and 8 – Starting points

42. The State violates Articles 2 and 8 if a real and immediate risk[55] or serious and substantial risk[56,57] to these rights exists, where the state knew or ought to have known about the risk and has failed to exercise due diligence by adopting reasonable and appropriate measures[58] to prevent the risk and / or to ensure that, in the decision-making process relating to harmful activities, due weight has been accorded to the interest of individuals concerned[59]. The "scope of the positive obligations under Article 2 of the Convention largely overlaps with those under Article 8".[60] A future risk[61] from an environmental situation threatening a group of

[53] See Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania, App No 47848/08, 17 July 2014, §§ 104-114; Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania, App No 2959/11, 24 March 2015, §42.

[54] Compare with Bulgarian Helsinki Committee v. Bulgaria, App Nos 35653/12 and 66172/12, 16 July 2016, §§ 50-61

[55] Önerylidiz v. Turkey, App No 48933/99, 30 November 2004, § 100

[56] Tătar v. Romania, App No 67021/01, 27 January 2009, §§ 106-107

[57] e.g., Cordella and others v. Italy (supra n.42), § 157 – "level of seriousness which significantly diminishes (..)"

[58] Hatton and Others v. The United Kingdom (GC), App No 36022/97, 8 July 2003, § 98; Demir and Baykara v. Turkey, App No 34503/97, 12 November 2008, § 111

[59] Taşkin and others v. Turkey (supra n.38), § 115; Hatton and others v. The United Kingdom (supra n.58), § 99; Hardy and Maile v. The United Kingdom, App No 31965/07, 14 February 2012, § 217

[60] Budayeva v Russia, App Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, § 133

[61] Risks materialising later have triggered obligations see Önerylidiz v. Turkey (supra n.55), § 100

people is a violation if a "substantial risk" threatens the health and well-being of persons.[62] The preventive nature of the rights is key, otherwise "the rights of the Applicants would be set at naught."[63] There is no firm distinction between positive and negative obligations– i.e., a duty to refrain from certain activities.[64]

43. The duty to implement measures reasonably available requires the State to "put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life"[65] and "take all the measures necessary to ensure effective protection of the right of the persons concerned to respect for their private life."[66] Any regulation must be appropriate to the activity[67] and based on environmental reports.[68,69]

44. The Court must "scrutinise the decision-making process to ensure that due weight has been accorded to the interest of the individual."[70] The process as such must enable the decision-makers to "predict and evaluate in advance the effects of those activities which might damage the environment" as "the importance of public access to the conclusions for such studies and to information which could enable members of the public to assess the dangers to which they are exposed is beyond question."[71] The state must in certain cases provide the required information.[72] The

[62] Tătar v. Romania (supra n.56), §107

[63] Taşkin and others v. Turkey (supra n.38), § 113 (2)

[64] López Ostra v. Spain, App No 16798/90, 9 December 1994, § 51; Jugheli v. Georgia, App No 38342/05, 13 July 2017 § 73

[65] Önerylidiz v. Turkey (supra n.55), § 89

[66] Cordella and others v. Italy (supra n.42), § 173

[67] Cordella and others v. Italy (supra n.42), § 159; Jugheli v. Georgia (supra n.64), § 77

[68] Jugheli v. Georgia (supra n.64), §§ 76-77

[69] Supreme Court of the Netherlands (Civil Division), No 19/00135, Urgenda v The Netherlands, 20 December 2019, § 5.3.3 (hereinafter "Urgenda-judgement"): https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf , pointing to Jugheli v. Georgia, App No 38342/05, 13 July 2017, § 77

[70] Taşkin and others v. Turkey (supra n.38), § 115; Hatton and others v. The United Kingdom (supra n.58), § 99; Hardy and Maile v. The United Kingdom (supra n.59), § 217

[71] Taşkin and others v. Turkey (supra n.38), § 119

[72] Brincat and others v. Malta, App Nos 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, 24 July 2014, § 102

fact that an approval may be revoked (e.g. at the PDO-stage) does not reduce the scrutiny to which the Court evaluate the decision-making process.[73]

3.2 The Common Ground informing the State's obligations according to Article 2 and Article 8

(i) International legal sources informing the Common Ground

45. Recent judgments from European courts, including the apex courts of Netherlands and Germany, confirm the UNFCCC, the Paris Agreement and the reports of the IPCC as common ground, together with precautionary principle, and the requirement that each state do its "fair share" to safeguard intergenerational rights.[74]

46. The precautionary principle covers the full range of preventive measures, whether taken under scientific uncertainty or not.[75] There is a global consensus that climate change and its adverse effects are no longer a matter of uncertainty but of acknowledged risks.[76] And the principle also applies if the actual materialization of the risk to the Applicants' life and health would be deemed to be uncertain.[77]

47. The *Tribunal Administratif de Paris* in its judgement did not find France to be excused for lacking emission reductions despite future emission targets (the Paris targets) still being attainable.[78] The ENNHRI-report provides other examples.[79]

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[73] Hardy and Maile v. The United Kingdom (supra n.59), §§ 134-136

[74] See Urgenda judgement (supra n.69), §§ 7.5.1, also 5.2.2, 5.6.2, 5.7.7 - 5.7.9; Neubauer, et al. v. Germany (supra n.5), §§ 101, 149, 175, 178, 202-204; See also: Paris Administrative Tribunal (4th section, 1st chamber), nos. 1904967, 1904968, 1904972, 1904976/4-1, Notre Affaire à Tous and Others v. France, 3 February 2021, §§ 31, 34, where France was not excused for lacking emission reductions by arguing the Paris Agreement emission targets were still attainable

[75] Trouwborst A (2009) 'Prevention, Precaution, Logic and Law, Erasmus Law Review', Erasmus Law Review, 2(2), p. 124: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498430

[76] See Viñuales J (7 February 2016) 'The Paris Climate Agreement: An Initial Examination (Part I of III), EJIL:Talk!, https://www.ejiltalk.org/the-paris-climate-agreement-an-initial-examination-part-i-of-ii/

[77] Urgenda judgement (supra n.69), § 5.3.2

[78] Notre Affaire à Tous and others v. France (supra n.74), §§ 31, 34

[79] See recent analysis of national jurisprudence by ENNHRI (supra n.52), § 4.2

48. Many courts have found that all climate impacts must be taken into account before authorising a fossil fuel project.[80] Failure to assess exported emissions has been found a violation of the legal requirement to consider intergenerational equity.[81,] The NCS held that exported emissions are encompassed by the Norwegian Constitution Article 112, because the state has "direct impact or authority" [82] but the majority found that exported emissions should be evaluated at a later stage. The Hague District Court recently ordered Royal Dutch Shell, pointing to the "widespread international consensus that human rights offer protection against the impacts of dangerous climate change" to reduce CO2 emissions by net 45 % "(…) including the end-users, (…) and to use its influence to limit any lasting consequences as much as possible (…)."[83]

(ii) EU and EEA legal sources informing the Common Ground

49. The SEA Directive and EIA Directive,[84] are binding for all members of the EU and EEA. The Directives are part of a legal common ground.[85]

50. On the EIA Directive, the CJEU has clarified that the scope of assessment should "include an analysis of the cumulative effects on the environment" which "should be considered jointly with other projects, in so far as such an analysis is necessary in order to ensure that the assessment covers examination of all the notable

[80] Gauteng Division of the High Court of South Africa, Case no. 65662/16, Earthlife Africa Johannesburg v. Minister of Environmental Affairs and others, 8 March 2017, §§106-107: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2017/20170306_Case-no.-6566216_judgment.pdf

[81] Land and Environment Court of New South Wales, NSWLEC 720, Gray v Minister for Planning, 27 November 2006 at § 126: https://elaw.org/system/files/Gray%20v.%20Minister%20of%20Planning_0.pdf This has led to the invalidity of certain projects at a time "when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions." Cf. Land and Environment Court of New South Wales, NSWLEC 7, Gloucester Resources Limited v Minister for Planning, 8 February 2019, §699: https://www.caselaw.nsw.gov.au/decision/5c59012ce4b02a5a800be47f

[82] NSC judgement (supra n.25), § 149; ENNHRI report (supra n.52), § 4.1.3

[83] Usage by end-users include usage after export. The Hague District Court, HA ZA 19-379, Milieudefensie vs Royal Dutch Shell, 26 May 2021, § 4.1.3, § 4.4.24: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339

[84] EU Directive 85/337/EEC (now Directive 2011/92/EU) on the assessment of the effects of certain public and private projects on the environment, 13 December 2011: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0092

[85] Bosphorus Hava Yolları Turizm v. Ireland, App No 45036/98, 30 June 2005, §§ 155-156

impacts.".[86] The NSC minority stated that this "can hardly be different under the [SEA] Directive, (…) This means that an isolated assessment cannot be made of the climate effects of an opening of the Barents Sea South-East."[87] The CJEU has repeatedly held that the terms of the EIA Directive "must be interpreted broadly."[88]

51. The CJEU has consistently held, emphasised by the NSC minority,[89] that the environmental assessment pursuant to the SEA Directive is supposed to be carried out when plans and programmes "are prepared and prior to their adoption"[90] or "as soon as possible so that its conclusions may still have an influence on any potential decision-making"[91]. A *post hoc* report cannot remedy an inadequate assessment,[92] and an impact assessment under the EIA Directive, cannot "dispense with the obligation to carry out such an assessment under" the SEA Directive.[93] Thus postponing the impact assessment to a later stage will not rectify Respondent's failure to carry out an assessment pursuant to the Directive at the opening stage.[94]

52. With a basis in EU-law, the ECtHR has established that the precautionary principle represents a legal standard in cases concerning environmental harm.[95]

3.3 Applying Articles 2 and 8

(i) Respondent's Licensing Decision represents a real and serious threat to Applicants

53. All public and private actions (licensing, exploration, drilling, extraction, production, promotion, marketing and export) required to bring undiscovered oil

[86] Case C-404/09, European Commission v. Spain, 24 November 2011, § 80
[87] NSC judgement (supra n.25), § 265
[88] Case C-671/16, Inter-Environment Bruxelles ASBL v. Brussels Capital Region, 7 June 2018, § 34; Case C-473/14, Dimos Kropias Attikis v. Ypourgos Perivallontos, 10 September 2015, § 50
[89] NSC judgement (supra n.25), § 285
[90] Case C-671/16 (supra n.88), § 62
[91] Case C-671/16 (supra n.88), § 63
[92] Case C-404/09 (supra n.86), § 83
[93] Case C-295/10, Genovaitė Valčiukienė & Others v Pakruojo Rajono Savivaldybė & Others, 22 September 201, § 63
[94] NSC judgement (supra n.25), §§ 283-285
[95] Tătar v. Romania (supra n.56), §§ 109-111

and gas into the market, take place within Norway and are subject to Norwegian laws and licensing processes. Such actions fall within Norwegian jurisdiction.

54. The NSC noted that climate change "undoubtedly could lead to loss of human life" in Norway and that the threats are serious.[96] Applicants are and will be increasingly affected by the climate crisis (sections 1.2–1.3). The effects and the increased risk following severe climate change that the licences induce constitute a "*real*" and "*serious and substantial risk* to health and well-being (…) and more generally, to a healthy and protected environment"[97] that represents "an ecological risk [that] reaches a level of seriousness which significantly diminishes the applicant[s'] ability to enjoy [their] home[s] or private or family life.".[98]

55. The increase in risk from new licences is also *real.* The reality and urgency of threats against life and wellbeing flowing from the decision must be understood in the context of the obligation "to reach global peaking in greenhouse gas emissions as soon as possible (…) and undertake rapid reductions thereafter."[99] The Climate Risk Commission stated in 2018 that it is "highly uncertain whether mankind can adapt to this development" – referring to the climate change that today's emissions' trajectories will lead to.[100] The decision to licence did not consider the efforts required by all to reach global peaking of greenhouse gases.[101] The increase in risk occurs as soon as licences are issued since their purpose is extraction of oil and gas. The ensuing risk increases after 2030, with increased extraction of oil and gas, bringing the situation to a "*level of severity* necessary to bring the complaint under the ambit of Article 8".[102]

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[96] NSC judgement (supra n.25), §§ 167-168

[97] Tătar v. Romania (supra n.56), § 107

[98] Cordella and others v. Italy (supra n.42), § 157

[99] Paris Agreement to the UNFCCC, 12 December 2015, T.I.A.S. No. 16-1104, art 3: https://treaties.un.org/doc/Treaties/2016/02/20160215%2006-03%20PM/Ch_XXVII-7-d.pdf

[100] Climate Risk Commission (supra n.15) p. 52. "Det er høyst usikkert om det vil være mulig for menneskeheten å tilpasse seg slike endringer."

[101] IPCC Special Report On 1.5C (supra n.15), p. 96

[102] Dubetska and others v. Ukraine, App No 30499/03, 10 February 2011, § 119

56. The NSC found the increased risk was not *immediate*[103] which is not the proper test in relation to Article 8. The question is whether the risk is a "serious and substantial risk to health and well-being".[104] Recalling the Convention's preventive nature, its purpose as a "living instrument", its applicability to "present day conditions"[105] and to acts "whether performed within or outside national boundaries [...]"[106], the threats against the Applicants' rights *are, in fact, immediate* as the term refers to the point in time when authorities can still act to prevent the potential harm. Timely preventive measures have more lasting impacts than mitigation efforts alone. Issuing licences to extract petroleum can only accelerate climate change risks.

57. That related harm will be worse in years to come does not relieve Respondent of its obligations.[107] Hence, when Respondent issues new licences at a time when deep decarbonisation is needed[108], this constitutes a real, serious and substantial risk.

(ii) Respondent knew or ought to have known of the harms to the Applicants' Convention rights resulting from its licensing decision

58. Respondent has known about the risks posed by climate change represents to Applicants for a long time, and that the licencing decision increases these risks. Respondent has never refuted this.

59. Since that decision, UN treaty bodies CESCR and CEDAW and the UN Special Rapporteur for Human Rights and the Environment have challenged further Arctic oil exploration in Norway as inconsistent with its human rights obligations, calling on Respondent to "reconsider," "review" and "stop" (resp.) its expansion.[109]

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[103] Ivan Atanasov v. Bulgaria, App No no. 12853/03, 2 December 2010, § 66; NSC judgement (supra n.25), §§ 167-168

[104] Tătar v. Romania (supra n.56), §§ 106-107

[105] Demir and Baykara v. Turkey (supra n.58), §§ 66, 68

[106] Loizidou v. Turkey (GC), App no 15318/89, 23 March 1995 §§62, 70-72, 23

[107] Tătar v. Romania (supra n.56), § 111

[108] Gloucester Resources Limited v. Minister for Planning (supra n.81), §§ 514-516, 526-527

[109] Boyd D (3 January 2020) 'Visit to Norway: Report of the UN Special Rapporteur Human Rights and the Environment', UN Doc A/HRC/43/53/Add.2: Annex 26; Committee on Economic, Social and Cultural Rights (2020) 'Concluding observations, UN Doc E/C.12/NOR/CO/6: Annex 27. Concluding observations on the ninth periodic report of Norway CEDAW/C/NOR/CO/9 (2017): Annex 28

(iii) Respondent neglected to take reasonable and appropriate measures

60. A State has obligations to adopt "*reasonable and appropriate measures"* to avert or to minimise such harms[110] and to do "everything in [its] power"[111] to protect the Applicants' rights. A State must have in place a "legislative and administrative framework designed to provide effective deterrence against threats to the right to life."[112] As the younger generations, and those unborn, carry an unequal burden, States must then use "detailed and rigorous data, in a situation in which certain individuals bear a heavy burden on behalf of the rest of the community."[113]

61. Respondent has no laws or regulations regarding exported emissions. No Norwegian law requires the development of a plan to transition away from the production of fossil fuels in line with IPCC 1.5°C compliant emission trajectories. Respondent has no plan for how much of the remaining carbon budget should be expended by combustion of Norwegian oil and gas. Exported emissions represent 95 % of total emissions from oil and gas extracted from the Norwegian continental shelf. This was completely omitted from the preparatory documents leading up to the licensing, in sharp contrast with the requirement to use "detailed and rigorous data"[114] when burden sharing is unequal. Respondent continues to increase the threats to Applicants' ECHR rights by issuing new licences, in violation of its obligations to apply "necessary and appropriate measures."[115]

(iv) Respondent has neglected to ensure timely consideration of the Applicants' interests to enable those exposed to understand the risks and bring them to public debate

62. Respondent has not communicated to the public, including the Applicants, as part of its impact assessment before the licences were granted:

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[110] Taşkin and others v. Turkey (supra n.38), § 113

[111] Kolyadenko and others v. Russia, App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012, §§ 191, 212, 216; Önerylidiz v. Turkey (supra n.55), § 135

[112] Önerylidiz v. Turkey (supra n.55), § 89

[113] Jugheli v. Georgia (supra n.64), § 73

[114] Jugheli v. Georgia (supra n.64), § 76

[115] Önerylidiz v. Turkey (supra n.55), § 101; Cordella and others v. Italy (supra n.42), § 173

a. Total future estimated emissions from the combustion of oil and gas stemming from the licensing in 2016, and related effects;

b. How much of the global carbon budget will be used up by exported emissions from Norwegian oil and gas;

c. How emissions from oil and gas brought to market from 2035 and onwards are consistent with temperature targets and required emissions reduction trajectories.

63. The NSC majority removes the duty to describe and assess the above facts which are core at the planning stage to prevent exceeding the 1.5°C limit. The NSC only evaluated the lack of assessment for licences in the BSSE, but the same applies in the BSS. These licenses are within the control of the State and should have been described, assessed, and integrated at the planning stage. The NSC decision to allow the State to postpone the assessment to the PDO stage is a violation of Respondent's obligations under the SEA Directive. It is also a violation of Respondent's duty to abide by society's need to secure the Applicants' rights under the Convention.

64. Omitting the full climate effects from the EIA in the 2013 decision to open BSSE deprived Applicants of the possibility to fully understand and act on their rights following the 2016 licensing decision. These omissions deprived Applicants of essential specific data and impaired their ability to inform and participate in the public discourse on the climate crisis.

65. These neglects rendered the Applicants unable to fully assess the risks to which they were exposed,[116] and the threats to their rights caused by the licensing decision.

3.4 Violation of Article 13 taken together with Articles 2 and 8

66. The right to an effective remedy requires a substantive and rigorous review of an arguable claim and remedies that are adequate to address the nature of the wrongs in a timely manner.[117] The Norwegian courts did not assess the merits of the

[116] Taşkin and others v. Turkey (supra n.38), § 119

[117] Council of Europe (31 December 2020), Guide on Article 13 of the ECtHR: https://www.echr.coe.int/Documents/Guide_Art_13_ENG.pdf

Convention claims in full and based on ECtHR case law.[118] Their assessment was superficial and seriously erroneous. The Norwegian courts did not apply the correct thresholds to assess Respondent's positive obligations pertaining to Articles 2 and 8 and wrongfully required an "immediate link" between the climate risks and the licences, while limiting environmental harm to being "local".[119]The NSC's determination that emissions reductions may be deferred to the PDO stage fails to meet the obligation of promptness, hence an effective remedy.[120]

3.5 Violation of Article 14 taken together with Articles 2 and 8

67. Applicants 4–6 are members of the indigenous Sámi community, whose culture, land and resources are negatively impacted by the acts complained of. Applicants 1–6 are all young individuals. All members of Applicant 7 are between 13 and 25 years old who are victims of indirect and disproportionate discrimination due to the licencing decision of 2016.

68. A violation of Article 14 may occur as a consequence of "a general policy or measure that has disproportionately prejudicial effects on a particular group [...] even where it is not specifically aimed at that group and there is no discriminatory intent."[121] Discrimination may arise from a neutral rule or a de facto situation.[122] Age is a prohibited discriminatory ground under Article 14.[123]

69. Applicants 1–6 are increasingly impacted by climate change throughout their lives. This conflicts with Court's case law on age-based discrimination and the purpose of Article 14. Applicants 1–6 had few or no opportunities to participate in decision-making but have to shoulder a heavier burden when being required to tackle the hardest and most long-lasting consequences of the decision.

[118] Hatton and others v. The United Kingdom (supra n.58), § 141
[119] NSC judgement (supra n.25), § 170
[120] Çelik and İmret v. Turkey, App No 44093/98, 26 October 2004, § 59
[121] S.A.S v. France, App No 43835/11, 1 July 2014, § 161
[122] Zarb Adami v. Malta, App No 17209/02, 20 June 2006, § 76
[123] Schwizgebel v. Switzerland, App No 25762/07, 15 June 2010, § 85