ATTORNEY GENERAL FOR CIVIL AFFAIRS

To the European Court
of Human Rights

OSLO, 15 September 2022

Additional observations by the Kingdom of Norway

represented by Henriette Busch, advocate at the Office of the Attorney General for Civil Affairs, as agent, and by Gøran Østerman Thengs, advocate at the same office, in

app. no. 34068/21, Greenpeace Nordic and others v. Norway

• • •

1 INTRODUCTION

(1) Reference is made to the Court's letters 4 July 2022 and 8 August 2022 in which the Court invited the Government of the Kingdom of Norway to submit a rejoinder by 15 September 2022 at the latest on both 1) the applicants' additional submissions dated 29 June 2022; as well as 2) the submissions by five third-party interveners.[1]

(2) The legal views held in the applicants' additional submissions appear to be essentially a reiteration of the application of 14 June 2021. In general, the Government therefore refers to and fully maintains the views expressed in the written observations 26 April 2022 regarding the issues relating to admissibility, applicability and merits of the application. Several parts of the additional submissions do however occasion a rejoinder from the Government, see section 2 below. As regards the submissions by the third-party interveners, the Government will provide some brief observations in section 3 below, to be read in conjunction with the written observations 26 April 2022 and section 2 of these additional observations.

[1] The United Nations Special Rapporteurs on human rights and the environment and on toxics and human rights; ClientEarth; The Norwegian Grandparents' Climate Campaign; The European Network of National Human Rights Institutions; and The International Commission of Jurists (ICJ International) and ICJ Norge.

Universitetsgata 8, 0164 Oslo
P.O. Box 8012 Dep. NO-0030 Oslo
postmottak@regjeringsadvokaten.no
hbu@regjeringsadvokaten.no
+47 22 99 02 00
+47 22 99 02 67

2 OBSERVATIONS ON THE APPLICANTS' ADDITIONAL SUBMISSIONS

2.1 General observations on the applicants' factual premises and general criticism of Norway's climate and energy policy

2.1.1 Observations on the factual premise for the applicants' legal arguments

(3) The applicants' legal claim of a violation of the Convention on account of the impugned decision of 2016 seems to rest on the fundamental premise that *any petroleum exploration* runs contrary to an "existing scientific certainty" or "scientific common ground".[2] This invoked scientific premise is exclusively sought substantiated by references to the "*Net Zero by 2050. A Roadmap for the Global Energy Sector*", published by the International Energy Agency (IEA) in May 2021.[3]

(4) The Government observes that in the applicants' rendition of the report, conclusions appear to be drawn from the report in a way that the report itself does not seem to substantiate. As a consequence, the fundamental premise for the applicants' legal arguments seems to be incorrect.

(5) Notably, the "Net Zero by 2050" (NZE) does not present a prognosis. It is one of multiple scenarios describing how the world may reach net zero emissions and limit global warming to 1,5°C by 2050.[4] The scenario rests on a wide range of assumptions and measures regarding technology, costs, markets and behavior, presupposing a fast and fundamental transformation of all parts of the global economy, leading, *inter alia*, to a 75 percent reduction in the demand for oil and a 55 percent reduction in the demand for gas by 2050.

(6) It is based on such scenario-specific assumptions that the report states that *"[t]he rapid drop in oil and natural gas demand in the NZE means that no fossil fuel exploration is required and no new oil and natural gas fields are required beyond those that have already been approved for development"*.[5] In the applicants' rendition of the report in paras. 3 (footnotes 2 and 3), and 95 (footnote 143) however, this is presented in general terms while omitting this scenario-specific context when seeking to substantiate a fundamental premise of "scientific certainty" on which to base the legal argument that any new petroleum exploration must entail a violation of the Convention.

(7) The Norwegian energy and climate policy cannot be based on assumptions in individual studies or an individual scenario. Many different scenarios have been developed for how the world can reach net zero emissions and limit global warming to 1.5 degrees. The IEA Net Zero Roadmap and the Production Gap Report do not provide a prescriptive solution to the

---

[2] See paras. 3 (footnote 2 and 3) and 95 (footnote 143), cf. also para. 20 (footnote 24) of the additional submissions to the Application of 14 June 2021.
[3] Full report available here.
[4] Ibid., p. 49: "There are many possible paths to achieve net-zero C02 emissions globally by 2050 and many uncertainties that could affect any of them; the NZE is therefore *a* path, not *the* path to net-zero emissions".
[5] Ibid., p. 51.

climate challenge, but shows a pathway based on uncertain assumptions. Common to all scenarios that lead to net zero emissions is that the world as a whole implements measures that reduce greenhouse gas emissions close to zero. A large proportion of the world's fossil energy must then be replaced by renewable or low carbon energy. At the same time, the world's growing population must have access to stable and affordable energy. It will take time to restructure the large and very complex global energy system.

(8) Although contesting the applicants' rendition of the IEA report, the Government emphasizes that the report delivers a very important and powerful message to the global community that the demand for coal, oil and gas must be reduced substantially to reach the global goals of the Paris Agreement. The Government finds it pertinent to again emphasize that, although disagreeing with the applicants regarding how Norwegian society should approach energy and climate policy, there is no disagreement regarding the broad facts of climate change and its effects. However, as is also quite evident from the IEA report, the global climate and energy challenge is complex and must be met through both international cooperation and domestic action, see section 2.1.2. below.

2.1.2 On Norway's climate policy and relevant legal framework for emission reductions domestically and abroad

(9) The applicants and several of the third-party interveners allege that Norway's efforts to combat climate change are insufficient and that Norway is not taking the appropriate and necessary positive measures to combat climate change in accordance with its obligations under international law, cf. for instance the additional submissions para. 79 and 81. Although this is one of several examples of a widening of the scope of the case before the Court compared to the scope of the case before domestic courts, the Government finds it pertinent to provide a rebuttal to these claims.

(10) Norway is committed to and adheres to a climate policy which ensures that Norway is doing its part and complies fully with its obligations under international law, cf. also section 3.2 and 3.3 of the written observations. Norway has adopted and become part of a broad set of legally binding climate change instruments – also covering emissions from the petroleum industry.

(11) To this end Norway's Nationally Determined Contribution (NDC) under the Paris Agreement has been set at reducing emissions with at least 50 up towards 55 per cent by 2030 compared to 1990-levels. Furthermore, Norway has set as its long-term climate target to become a low emission society in 2050, which is equivalent to reducing emissions by 90 – 95 per cent compared to 1990-levels. Both the NDC and the long-term climate target has been established by law in the Norwegian Climate Change Act sections 3 and 4, respectively.

(12) In addition to the international commitment under the Paris Agreement, the Government has established a national non-legally binding target for transition of the economy to reduce domestic emissions by 55 per cent by 2030 as a step to transforming Norway into a low emission society.

(13) Norway has also submitted a long-term low emission strategy to the UNFCCC.[6]

(14) Norway's climate target for 2030 and 2050 are economy-wide, covering all sectors and includes all emissions and sinks from Norway, also the land-use, land-use change and forestry sector (LULUCF). The removals in Norwegian forests are significant compared to the emissions from the economy as a whole. To ensure a higher ambition level for Norway's emission reduction targets, Norway has adopted climate targets which do not account for the full CO_2-removals by sinks towards the targets. This means that a target for 2050 that includes the full CO_2-removal such as a net zero target would mean a much lower ambition level of emission reductions than Norway's current 2050 target.

(15) In addition, and parallel to the other Norwegian climate targets, the Norwegian Parliament has adopted a target of becoming climate neutral from 2030. This means that from 2030, Norway must achieve emission reductions abroad equivalent to remaining Norwegian greenhouse gas emissions. By setting this target Norway will, in addition to its national climate reductions targets, from 2030 contribute to reduce emissions in other countries as part of fulfilling this target.

(16) Furthermore, Norway has since 2008 been part of the comprehensive regulatory regime for managing emissions covered by the EU Emissions Trading System (EU ETS). The EU ETS applies to a large proportion of emissions from industrial production, including the petroleum industry. In 2019, Norway's ETS emissions was around 25 million tonnes CO_2 eq, or about half of Norway's overall emissions. These are emissions that largely originate from oil and gas production and industrial processes. The EU ETS sets a cap on emissions from industrial processes, the petroleum industry, power and heat generation and aviation. The EU ETS is a long-term policy instrument that gradually and progressively tightens the overall cap, so that total emissions are reduced.

(17) Norway also takes part in a climate agreement with the EU and Iceland. The Norwegian Parliament gave its consent to the Agreement in 2019, and the EEA Joint Committee Decision was adopted on October 2019.[7] The main regulations comprising EUs climate legislation from 2021-2030 are implemented in the EEA Agreement (Annex XX and Protocol 31).[8]

(18) The EFTA Surveillance Authority (ESA) and the EFTA Court are responsible for monitoring and enforcing compliance. They do this through reviews of emission inventories and other reports Norway is required to prepare. If Norway does not meet its obligations, ESA can bring a case before the EFTA Court, which may find Norway to be in breach of the EEA

---

[6] *Norway's long-term low-emission strategy for 2050*, available on the UNFCCC website: LTS1_Norway_Oct2020.pdf (unfccc.int)

[7] Available here.

[8] Directive 2003/87/EC (EU ETS); Regulation (EU) 2018/842 (ESR) and Regulation (EU) 2018/841 (LULUCF). The legislation is designed to achieve emission reductions of at least 40 per cent, as the previous climate target was 40 per cent. The EU is working on updating its legislation ("Fit for 55" package).

Agreement. Applicable EU-legislation also provides for sanctions that may be applied to ensure that countries, including Norway, meet their emission commitments.

(19) Norway intends to fulfil its NDC through participation in these regulations. The current climate agreement with the EU was agreed based on Norway and the EUs previous NDCs. Since then, both Norway and the EU have updated their NDCs under the Paris Agreement. The Norwegian Government intends to continue the cooperation with the EU also on the updated NDCs.

(20) Moreover, a key instrument to reduce emissions in Norway is pricing of emissions. The petroleum industry in Norway is already subject to strict measures to limit emissions to air from oil and gas production. Such measures include a CO_2 tax of close to 600 NOK/tonne. In addition, the Norwegian oil and gas industry is part of the EU ETS and the price of CO_2 quotas is set to rise substantially. The combined effect of the CO_2 tax and the EU ETS is that oil and gas producers on the Norwegian Continental Shelf are now facing a CO_2 cost of approx. 1500-1600 NOK/tonne. Norway has announced a gradual increase in the price of emissions to NOK 2000 per tonne CO_2 equivalents in 2030. In this case, "emission price" comprises ETS price and CO_2 tax. This will progressively increase the cost of emitting CO_2 and give a strong incentive to reduce emissions.

(21) To further contribute to emission reductions, Norway seeks to not only reduce emissions from Norway, but also from other countries. To that end the Norwegian Government has made climate change mitigation and promotion of renewable energy a top priority for Norway's development cooperation. The Government has announced that Norwegian climate financing of developing countries will double by 2026 and, as part of this commitment, the financial support for climate adaptation will be tripled. The Government has established a climate investment fund, including a plan for allocation of NOK 10 billion over five years. Norway will continue to champion reduced emissions from deforestation and forest degradation, as well as the sustainable management of forests and the conservation and enhancement of forest carbon stocks in developing countries (REDD+).

2.1.3 On Norway's long-term historic and future role of meeting European energy demand

(22) Section 2.2 of the Government's written observations provided a background on the opening of the Southeast Barents Sea (2013) and the 23rd licensing round (2016). In section 2.4, paras. 27-28 of their additional observations, the applicants present a criticism that is both unfounded and partly based on an unreasonable rendition of the Government's observations.

(23) Although there is no doubt that the areas encompassed in the opening of the Southeast Barents Sea could contain *both oil and gas*, the expectation was first of all that there would be large reservoirs of natural gas,[9] which was expected to be subject to increased demand

[9] Cf. Meld. St. 36 (2012-2013) p. 24.

over the coming decades while the demand for oil would be reduced, cf. page 8 of the Meld. St. 36 (2012-2013) [office translation, emphasis added]:

> *The gas market is changing. The access to gas is plentiful and the prices have been under pressure for some years, but demand is expected to rise and contribute to a better balance in the gas market in the longer run. With the increasing globalization of gas markets, gas will eventually also be available to new countries and new markets. Climate policy will potentially be able to provide extra stimulation to the demand for gas, as the replacement of coal with gas is an effective measure to reduce C02 emissions. The production of gas in EU countries is falling. They will therefore have increased demand for gas in the coming years. Norwegian gas will contribute to cover European demand for gas and is expected to be an attractive and valued source of energy for several decades to come. This will make further exploration, development and production of gas resources on the Norwegian continental shelf profitable. While climate policy will potentially be able to stimulate demand for Norwegian gas, this will potentially have the opposite effect for oil (....).*

(24) Recent development in the EU underlines this point. A Complementary Climate Delegated Act under the Taxonomy has recently been adopted, where, subject to strict conditions, specific nuclear and gas energy activities are included in the list of environmentally sustainable economic activities.[10]

(25) Norway's important long-term role of meeting the demand for energy in Europe was recently also underscored through a joint EU-Norway statement 23 June 2022,[11] *inter alia* highlighting the *"reliability of Norway as a safe and prudent supplier of oil and gas to Europe over the last 50 years"*. In the statement, the parties have agreed to:

> *"... step up cooperation in order to ensure additional short-term and long-term gas supplies from Norway, to address the issue of high energy prices, and to develop long-term cooperation on offshore renewable energy, hydrogen, carbon capture and storage, and energy research and development with a view to developing an even deeper long-term energy partnership"*. (emphasis added)

(26) The Government maintains that this role is in full conformity with Norway's efforts to combat climate change, through measures both domestically and abroad, cf. section 2.1.2 above on Norway's climate policy and relevant legal framework.

(27) These efforts require a balancing act, which was also described in paras. 7-11 of the written observations, occasioned by what was an incomplete rendition of the Government's arguments during the Supreme Court hearing in para. 21 of the original application. In para. 9 it was also pointed out that the recent energy crisis in Europe at the start of 2022 had

---

[10] Regulation 2022/1214/EU,

[11] Joint EU-Norway statement on strengthening energy cooperation, press release 23 June 2022.

"demonstrated" the need for a stable energy supply for "some time to come", and in para. 10 that this had "recently been further underlined" by Russia's war on Ukraine – an observation that is also expressed in the recent joint EU-Norway statement 23 June 2022.[12]

(28) Regrettably, in response to this, it is argued in the additional submissions that the Government seeks to "justify a decision made in 2016, by referencing Russia's invasion of Ukraine six years later", cf. para. 29. This argument also serves further as a premise for the request for general measures in para. 180.

(29) For the sake of good order, the Government clarifies that this is not the argument as to why there are no grounds for any violation of the Convention on account of the impugned decision, and the reference to Russia's intervention was merely an illustration and by no means a justification. The Government's views on admissibility, applicability of the Convention and, potentially, merits of the Application, are described in full in the observations of 26 April 2022.

(30) The Government does however disagree with the applicants' factual premises, cf. also section 2.1.1 above. Notably, exploration and new licensing rounds in Norway are not necessarily synonymous with increased *global* production or increased *global* CO_2 emissions. Norway produces oil and gas with significantly less climate gas emissions than the global average, and emissions are falling.

(31) This is also expressed in the joint EU-Norway statement of 23 June 2022, expressing that *"CO_2- and methane-emissions from production of oil and gas in Norway is low in a global context, less than half of the global average"*. The EU supports Norway's continued investments in petroleum activities – also beyond 2030:

> *"Norway has significant remaining oil and gas resources and can, through continued exploration, new discoveries and field developments, continue to be a large supplier to Europe also in the longer term beyond 2030. The EU supports Norway's continued exploration and investments to bring oil and gas to the European market".*[13]

(32) Norway will continue to make new acreage on the Norwegian Continental Shelf available to companies for exploration and new oil and gas production. This will contribute to reducing the sharp fall in global production towards 2030 that is expected to occur. The aim is to exploit available resources more efficiently, also with respect to emissions. A stable level of activity in the petroleum sector will continue and be supplemented by increased activities in carbon capture and storage, hydrogen, offshore wind, aquaculture and minerals. The Norwegian government will cooperate with the industry to work towards reducing

---

[12] Ibid., noting that the *"importance of Norway's oil and gas production for European energy security has increased further after Russia's unjustified and unprovoked war of aggression against Ukraine".*
[13] Ibid.

greenhouse gas emissions from the Norwegian continental shelf by 50 per cent by 2030 and to net zero by 2050.

2.1.4 All licenses awarded through the impugned decision of 2016 have been relinquished, cf. section 2.4 of the additional submissions

(33) In section 2.4, the applicants request verifications that all disputed licences "in reality" have been relinquished and request the Government to clarify the connection between the production licence 855 and the new licence in the same geographical area.

(34) All of the licenses awarded in the 23rd licensing round of 2016 have been relinquished. In order to provide clarification of the question raised in the additional submissions para. 24 (which regards Norwegian petroleum policy in general and the system of licencing rounds in Norway), a more comprehensive description of the system is necessary.

(35) Before an area is made available for awarding production licences, the Norwegian Parliament (the Storting) must have opened the area for petroleum activities. Such opening is decided on the basis of a strategic impact assessment carried out by the Ministry of Petroleum and Energy and submitted to the Storting for decision of whether or not to open the area in question for petroleum activities.

(36) An area-specific framework for petroleum activities is set out in the overall integrated management plans, most recently in 2020.[14] This can include areas where no petroleum activities will be permitted to safeguard environmental or fisheries interests, areas where there are restrictions on the times of year when exploration drilling is permitted, and other areas where there are environmental and fisheries-related conditions. The integrated management plans are subject to an extensive political process, where different considerations are weighed against each other based on an up-to-date factual and scientific input.

(37) A necessary condition for maintaining the production level over time is that new and profitable oil and gas discoveries are made regularly. Thus, a steady supply of prospective exploration areas is a prerequisite for maintaining both the exploration activity and the long-term value creation from the Norwegian Continental Shelf. In order to enable a continued stable level of production, it is therefore important to maintain a predictable pace in the allocation of prospective exploration areas. This is particularly important today in terms of contributing to Europe's energy security, cf. section 2.1.3 above. The licensing rounds are a pillar in Norway's petroleum policy in that respect.

(38) There are two kinds of licensing rounds on the Norwegian Continental Shelf, the numbered licensing rounds and the Awards in predefined Areas ("APA"). In accordance with the policy determined by the Storting, the APAs are announced every year and comprise the mature parts of the Shelf, with known geology and available infrastructure. The APA area is being

[14] Cf. Meld. St. 20 (2019-2020) (available here) and Innst. 382 S (2019-2020) (available here).

expanded in accordance with the criteria that the Storting has agreed to.[15] Thus, when an area is included in the APA area, it is available to the industry through the annual APA rounds. The APA rounds now cover the majority of the available exploration area on the Norwegian Continental Shelf.

(39) When carrying out all licensing rounds, including APA rounds, the Government decisions are in accordance with the policy decisions made by the Storting. Norway's maritime areas are managed through comprehensive and systematic processes, where knowledge of the environment and commercial activities is used as a basis for the considerations that are made.

(40) The area mentioned by the applicants in their latest submission (production licence 855) is located in the Barents Sea South, which was opened for petroleum activities by the Storting in 1989, following a prior strategic impact assessment. Consequently, this part of the Norwegian Continental Shelf has been available for petroleum activity since 1989. Later, the area has been subject to assessments through the integrated management plan a number of times, most recently through the handling by the Storting of Meld. St. 20 (2019–2020), cf. Inst. 382 S (2019–2020). Thus, the Storting has made a decision on whether there could be petroleum activities in the area. Although decisions to award specific licences are made by the Government, the policy and practice has been subject to evaluation in the Storting on several occasions and has been supported by a broad majority in the Storting.

(41) The area covering Production License 855 was relinquished in 2020 and was, as a mature area subsequently included in APA 2021 for re-licensing. When an area is included in the APA, the area is automatically included in the following APA licensing rounds. The areas can be expanded within the framework that lies in the management plans for the relevant sea area, but the area cannot be reduced. One possible exception to this rule is the emergence of important new information that is relevant for the decision in the management plan as to where petroleum activity can take place, after the relevant management plan was adopted.

(42) Parts of the area that was previously included in production license 855 have been re-licenced as part of production licence 1170.

2.2 On the applicant organizations' submissions before the domestic courts

2.2.1 Convention claims were not part of the case from its inception, and were of limited scope and depth, cf. additional submissions section 2.1

(43) As described in the Government's written observations section 2.3, the organizations did not claim any violation of the Convention before the District Court, but rather introduced this as new and alternative grounds for invalidity before the High Court. Claims relating to the Convention before the Supreme Court made up a significantly lesser part of the

[15] Cf. Meld. St. 28 (2010-2011) (available here) and Prop. 114 S (2014-2015) (available here).

organizations' arguments, as the crux of the matter was the interpretation and application of Article 112 of the Norwegian Constitution, cf. the Supreme Court § 3.

(44) In their additional submissions section 2.1, the applicants claim that the Supreme Court described this incorrectly. To substantiate this claim, the applicants have submitted the applicant organizations' final written summary to the district court dated 6 November 2017 (Annex 2) and their "leapfrog appeal" to the Supreme Court of 5 February 2018 (Annex 3).

(45) The Government fails to see how the submitted documents substantiate the applicants' claim. As is shown in the organizations' final written summary section 2.2 (Annex 2, page 3), the organizations claimed in the alternative that the impugned decision violated Norway's obligations stemming from "international law- and human rights law". This is clearly not a reference to the Convention, nor to any of the Articles of the Convention invoked before the High Court. The ECHR and several other human rights treaties have been adopted as Norwegian law through *the Human Rights Act* of 1999, stipulating that rules stemming from other domestic law shall be set aside should they conflict with these human rights treaties, as the latter take precedence. This is however not the case for obligations stemming from international law treaties that have not been adopted through the Human Rights Act. In the "leapfrog appeal" to the Supreme Court (Annex 3, p. 17), the organizations clarified the argument that principles of international law as well as comparative law should inform the interpretation of Article 112, without making any mention of the Convention.

(46) As pointed out in para. 164 in the Government's written observations, the scope and depth of the domestic courts' assessments will in general to a certain degree be a reflection of the plaintiffs' own submissions. The Government maintains that the relatively speaking limited scope and depth of the organizations' Convention claims before the High Court and the Supreme court is a relevant context for considering their criticism of what they characterize as a "superficial and seriously erroneous assessment" of the Convention by the domestic courts.

2.2.2 The applicants did not claim procedural errors for all the disputed licenses, cf. additional submissions section 2.2

(47) In the additional submissions para. 20, it is now alleged that the organizations invoked Convention grievances also regarding the Barents Sea South. With reference to the written observations 26 April 2022, the Government observes that it follows clearly from the Supreme Court's rendition that the organizations explicitly did "not claim that the same errors were made when awarding the licenses in the Barents Sea South", cf. the Supreme Court §§ 14 and 79. Before the domestic courts, the "procedural issue only concern[ed] the most recently awarded area in the Southeast Barents Sea from the 23rd licensing round", cf. the Supreme Court § 181, and not the licensing in the Barents Sea South. The scope of the case before the Court is therefore limited to these licenses.

2.2.3 Discrimination was not argued in essence before domestic courts

(48) With reference to the Applicants' additional submissions section 2.6, and also sections 3.1.1-3.1.3, the Government reiterates its views on the victim requirement in section 4 of the written observations.

(49) Regarding the Applicants' Article 14 claim on account of membership of the Sámi community,[16] the Government noted that this was not invoked before domestic courts, cf. para. 170 (and also 92) of the written observations.

(50) In para. 154 of the additional observations, the applicants express disagreement with this view, although without any substantiation. The Government observes that the applicants have still not shown that discrimination on account of "membership in the Sámi minority" was argued at all before the domestic courts, let alone 'in essence'. This claim therefore falls outside of the scope before the Court.

(51) Regarding the claim of discrimination based on age, the Government reiterates that this was not argued 'in essence' before domestic courts, with reference to paras. 91 and 167-169 of the written observations.

2.3 Brief observations on section 3 of the applicants' additional submissions ("On the law")

2.3.1 Reiteration of why the applicant organizations are not "victims" within the meaning of Article 34, cf. additional submissions section 3.1.1

(52) Reference is made to the Government's written observations 26 April 2022 section 4.2, which are commented upon in the Applicants' additional observations section 3.1.1. In para. 45, the applicants' rendering of the Government's argument is incomplete, based on partial citations. Based on the citations in para. 45, one may get the incorrect impression that the Government's argument is that the organizations lack *locus standi* merely based on a distinction between positive and negative obligations. What is lacking in the applicants' rendition is the central point that the application constitutes an *actio popularis*, for which there is no exception in the Court's jurisprudence. In light of this, and for the sake of good order, the Government's argument is provided in full in the following, with emphasis added to the parts omitted in the applicants' rendition:

> *(74) The fact that the environmental organizations were parties to the domestic proceedings is normally something for the Court to take into account. However, an organization may not be granted locus standi in relation to a Convention right only granted to physical individuals. Article 2 protects the life and physical integrity of*

[16] The Applicants have now clarified that this claim is brought forth by Applicants no. 2, 4 and 6, cf. section 2.5 of their additional observations 29 June 2022.

persons, which does not extend to organizations, and neither do the aspects of Article 8 regarding the similar features of home and family life.

(75) In this case, the organizations claim to represent their members, as well as the young generations more generally and future generations, see "additional submission" §§ 37–40. The organizations invoke the Court's case law regarding situations where organizations should be allowed to represent groups of individuals in order to bring their claims before the Court. The exceptions invoked by the organizations are not suitable in the present case. These exceptions concern situations where representatives seek to bring cases before the Court regarding the state's 'negative' interferences with the Convention rights of certain individuals or certain groups of individuals.

(76) The present application concerns the alleged omission by the state to take the positive climate change measures preferred by the applicants to secure the continued future enjoyment of Convention rights for the population as a whole. The applicants argue that the Government has "no laws or regulations regarding exported emissions", and that no Norwegian law requires the development of a plan to transition away from the production of fossil fuels in line with the IPCC 1.5°C compliant emission trajectories, cf. the additional submissions § 61. Notwithstanding the fact that Norway fulfils its international climate obligations, this line of reasoning constitutes an actio popularis regarding Norwegian energy and climate policy in general.

(77) In order to assess the complaint made by the organizations, the Court will have to establish a new exception from the main rule that it may not review complaints constituting actio popularis. Whereas the existing exemptions ensure that the Court actually has jurisdiction over all cases concerning interferences with the individual sphere, allowing the present complaint would mean extending the Court's competence to reviewing positive policy measures. Such an extension of the jurisdiction of an organ established pursuant to an international treaty would require a sound legal basis.

2.3.2 On why the individual applicants have not exhausted domestic remedies within the meaning of Article 35, cf. the additional submissions section 3.2.1

(53) Although 1) arguing at length as to why the specific individual applicants 1-6 are disproportionately affected by the impugned decision,[17] while also claiming that the application is not an *actio popularis*,[18] the applicants 2) on the other hand underscore that there is *"absolutely no reason to believe that a new domestic proceeding brought by the individual applicants would yield a result any different from the domestic proceedings"* brought forward by the organizations, cf. para. 61.

---

[17] Cf. additional observations paras. 31-39; and 131-157.

[18] In para. 53, it is stated that *"Applicants 1-6 are indeed in a particularly vulnerable position in regards to the negative effects of climate change"*, thus being in a situation that is *"different from the situation of society as a whole"*.

(54) These two points of view seem to be mutually exclusive or at least challenging to reconcile. The Government reiterates that domestic courts have not had the opportunity to examine the Convention grievances that are described at length in the additional observations, based on both self-declarations and numerous references to general articles on mental and physical health issues in general in the context of climate change, see in particular footnotes 40-47 and 56-62.

(55) The Government reiterates that the application is inadmissible and that the case reveals no special circumstances that would absolve the applicants from the requirement to exhaust domestic remedies, cf. Article 35 § 1 of the Convention. The burden is on the applicants to show why the domestic remedies would be "ineffective" and they have failed to discharge that burden. Merely pointing to doubts about the prospects of success in insufficient, cf. *Ghergina v. Romania* [GC], app. no. 42219/07 (decision 9 July 2015) para. 101:

> *"The Court reiterates that in a legal system in which fundamental rights are protected by the Constitution and the law, it is incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to apply those rights and, where appropriate, develop them in exercising their power of interpretation (see, mutatis mutandis, A, B and C v. Ireland [GC], no. 25579/05, § 142, ECHR 2010). In the present case, if the applicant had any doubts about the possibility of obtaining a court order, it was for him to dispel those doubts by applying to the domestic courts."*

(56) Reference is made to the Government's views on this issue as explained in section 5 of the written observations.

2.4 Observations on the applicants' views on the scope of the case and context, cf. section 3.3.3 of the additional submissions

(57) In section 3.3.3 the applicants argue that the consideration of the impugned decision should be considered in the much wider context of "climate change and the global struggle in solving the problem, the ongoing Norwegian policy regarding seeking new, undiscovered oil and gas fields in novel areas and subsidising the development of such activities, as well as the lack of emission reductions undertaken in Norway thus far", cf. para. 91.

(58) In doing so, the applicants first invoke a "scientific common ground" based on conclusions drawn from the IEA's Net Zero report that the report itself does not seem to substantiate, see section 2.1.1 above.

(59) Second, the applicants imply that the upstream oil and gas sector is subsidized by the Norwegian state. This is an unfounded and incorrect claim. For the sake of good order, the Government also notes that footnote 139 incorrectly states that 58 PDOs are expected to be submitted by oil companies for approval in 2022 and 2023. The Ministry expects significantly less development projects to be delivered to the authorities for approval within this timeframe. The industry is working to submit PDOs in relation to approximately 15 new field developments in 2022, in addition to investments being made related to increased recovery and further development of existing fields. Third, the applicants claim that, *"as part of the*

relevant context, the Court must note that the Respondent has undertaken no assessments of evaluations that are known to the public to substantiate that the ongoing licensing policy is in conformity with a duty on the State to reduce risks from climate change". The Government does not share this view and refers to section 2.1.2 above, cf. also the written observations section 3.3.2, providing an overview of Norway's climate policies and measures. The debate on whether upholding the production of oil and gas is compatible with Norway's responsibilities concerning climate change is very much a public one, it is continuously ongoing and is an issue in numerous white papers and debates for the Storting.[19]

(60) Fourth, in para. 96 (as well as 126), the applicants invoke a report from the Norwegian National Institution on Human Rights (NHRI),[20] dated 18 March 2022[21]:

> *The Norwegian National Institution on Human Rights has expressed that unless it can be shown, based on the precautionary approach, that each PDO-approval is in line with a legally assessed tolerance limit, additional PDOs cannot be approved.*

(61) This conclusion is presented without context. For the sake of good order, the Government points out that this report was based on NHRI's interpretation of Article 112 of the Norwegian Constitution and not the Convention. In connection with the Storting's review of the NHRI's annual 2021 report, the majority of the parliamentary committee expressed disagreement with both NHRI's conclusion and the basis for the conclusion in their report of 18 March 2022, adding that it is without basis in the plenary judgment of the Supreme Court in the present case.[22][23]

2.5 Various observations on section 3.3.5 of the additional submissions ("Procedural obligations")

(62) In para. 111, the applicants use of the term "undeveloped" is misleading when describing the areas covered by the licences awarded in the impugned decision. All areas awarded in a licensing round are by definition without production of petroleum. In the 23rd licensing round, 10 production licences were awarded. Three of these were located in the Southeast Barents Sea, which was opened for petroleum activities in 2013. These areas were therefore

---

[19] For instance, a recently debated proposal of ceasing to grant licences for petroleum exploration on the Norwegian Continental Shelf: https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2021-2022/inns-202122-076s/

[20] The NHRI is also one of the third-party interveners in support of the Applicants in the present case.

[21] Available here: https://www.nhri.no/wp-content/uploads/2022/03/Utredning-om-Grunnloven-%C2%A7-112-og-plan-for-utbygging-og-drift-av-petroleumsforekomster.pdf

[22] See Innst. 425 S (2021-2022) of 24 May 2022, available here.

[23] The NHRI report's interpretation of Article 112 and conclusion as to PDO-approvals as referred to by the applicants above, was also criticized by professor of public law Eivind Smith in a report of 16 May 2022 to the Norwegian Storting. Available here: https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2021-2022/inns-202122-425s-vedlegg.pdf

considered "non-mature". The remaining seven were awarded in the Barents Sea South, which was opened for petroleum activities by the Storting in 1989, and were considered "mature". There has been petroleum activities in this area since 1979, with the Snøhvit gas field in production since 2007, the Goliat oil field in production since 2016 and the Johan Castberg field under development with a start-up scheduled for 2024.

(63) Regarding the applicants' view on impact assessment requirements in para. 116 and 117, the Government refers to the written observations section 6.3 and 7.2.3. Adding to this, the Government underlines that there are no explicit requirements in neither the SEA Directive nor the EIA Directive for assessments of potential or anticipated future emissions of greenhouse gases abroad as a result of the activity under assessment. In the present case it was therefore never a question of whether Norway could or could not "postpone" the assessment of potential impacts from combustion of exported oil and gas abroad. In any case, it falls outside the scope of the Court's competence under the Convention to review the SEA and EIA Directives, cf. Article 32.

(64) Occasioned by the applicants' submissions regarding assessments of combustion emissions abroad in, inter alia, paras. 7, 116, 124 and 125, the Government furthermore notes the following:

(65) In the process of following up the Supreme Court Judgment, such assessments will be carried out by the Ministry of Petroleum and Energy in relation to plans for development and operation of new fields and will be included in the decision to approve or not approve the development plan in question. These decisions are published in accordance with Section 20 of the Petroleum Regulations. For developments submitted to the Storting before final consideration by the Ministry, the assessments will be included in the proposal to the Storting.

(66) There is a need for a coordinated, holistic and consistent approach to the issue, and this will be provided by the Ministry. The scope of the assessments of potential emissions from combustion of oil and gas will be adapted to the size of the resources in the individual development. This is a decisive factor for the extent of emissions from the final use of the resources. The Ministry makes calculations of gross combustion emissions (maximum emissions), and for larger developments the Ministry will also make estimates of net combustion emissions. These assessments will be made public as part of the Ministry's future decisions for approval of plans for development and operation.

(67) Since the autumn of 2021 specific calculations and assessments of potential emissions from the combustion of oil and gas from the production are included in the overall assessments of the PDOs. Only one PDO has been sanctioned after the judgement without these specific assessments (Breidablikk), as the new procedure was not completed when this plan was evaluated.

(68) Large developments are submitted to the Storting before final consideration and approval in the Ministry. The industry is working on several plans which, if decided to be carried out by the licencees, will be submitted to the Storting in the spring of 2023. As part of the

processing of these plans, the Ministry aims to have an updated, external study carried out of net emission effects related to oil and gas produced on the Norwegian Continental Shelf. Such a study will also help to shed light on net emission effects, not only linked to these projects, but also from Norwegian production more generally. Such a report will be made publicly available.

(69) It is well known that greenhouse gas emissions will occur from the combustion of oil and gas extracted on the Norwegian Continental Shelf. This is knowledge that over time has formed the basis of the public discourse and in the design and implementation of Norwegian petroleum and climate policy. The specific assessments described above will complement the more general considerations that for many years have been an inherent part of the Norwegian petroleum and climate policy debate.

(70) Furthermore, the Government also wishes to strengthen work on climate risk in the petroleum sector and will, going forward, include a clarification in the guidance for developing PDO documents to this effect. Thus, the licencees shall include a qualitative stress testing against financial climate risk in their uncertainty analysis related to development plans, by comparing the planned development's break-even price with different scenarios for oil and gas price trajectories that are compatible with the goals of the Paris Agreement.

2.6 Regarding the Applicants' procedural requests, cf. section 4 of additional observations

(71) The Applicants have requested an oral hearing on both the admissibility and merits of the case, the presentation of expert testimony during the oral hearing and also that the Applicants themselves be granted the opportunity to give testimony.

(72) The Government observes that three climate related cases (*Duarte Agostinho and Others v. Portugal and others*, app.no. 39371/20; *Verein KlimaSeniorinnen Schweiz and Others* v. Switzerland, app. no. 53600/29; and *Carême v. France*, app.no. 7189/21) have all been referred to the Grand Chamber. The Government assumes that the forthcoming Grand Chamber rulings will provide guidance as to the questions raised in this present case.

3 COMMENTS TO THE THIRD-PARTY SUBMISSIONS

3.1 Introduction

(73) The Government shares the concerns expressed by the third-party interveners concerning the effects of climate change and is deeply committed to the efforts in reducing emissions and finding solutions to the global problem of climate change.

(74) However, in the Government's view, there are no legal bases in relevant sources of law for the expansions the third-party interveners seek in the territorial, personal and material scope of the obligations under the European Convention. The Government will not comment upon every aspect of the submissions by the third-party interveners and refers at the outset to the

written observations 26 April 2022 as well as section 2 of these additional observations. Some additional comments are called for.

3.2 The Paris Agreement provides a solid framework for national actions, but does not directly regulate internationl trade or overseas economic activity

(75) As a party to the Paris Agreement, Norway is committed to reduce national emissions and contribute to the global long-term target in the Paris Agreement Article 2 of keeping the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius.

(76) Prohibiting certain activities, or otherwise imposing comprehensive restrictions, will often have a side to other rights protected under the Convention. A careful balancing of interests is therefore required, which should also take into account the need to ensure public support for policies in order to ensure compliance and pave the way for a progression of policies over time. Measures such as banning export of fossil fuels, offsetting emissions after import and limiting emissions from activities 'abroad', are neither dictated by 'common ground' in international nor domestic law, nor supported by state practice. To the contrary. There are no provisions in the Paris Agreement requiring the regulation – nor prohibition – of export of fossil fuels; import of goods the production of which involves release of emissions into the atmosphere; or the emissions stemming from overseas economic activity of 'entities' of one State. The Paris Agreement does not regulate international trade or overseas economic activity, and it is clear that greenhouse gas emissions stemming from production or consumption of energy or goods is to be reflected in the emission inventory of the state in which the emissions occur. There is no basis in the international climate change framework for one state to be responsible for emissions stemming from the territory of other states.

3.3 The material obligations the interveners argue in favor of, have not been adopted under the UNFCCC or the Paris Agreement

(77) As several of the third-party interveners encourage an interpretation of the Convention which will fill what they perceive as lacunae in international law pertaining to climate change, they argue both in favour of material obligations on states which have not been adopted under the UNFCCC nor the Paris Agreement and for the establishment of a climate change tribunal through which individuals may overturn the democratically determined climate policies of European States. In short, they seek to achieve restrictions on sovereignty for which there is no legal basis at present neither in treaties nor in state practice and *opinio juris*. Neither the Convention text nor the case law of the Court provides a basis for a dynamic interpretation of the Convention in order to make its provisions applicable in circumstances such as in the present case, to fill this perceived gap.

3.4 The Court shall interpret and apply the Convention

(78) Several of the third-party interveners rely heavily on other international recommendations and decisions from other courts. The Government recalls that it is the Convention which the Court can interpret and apply, as it does not have authority to ensure respect for

international treaties or obligations other than the Convention. No right to environmental preservation is included as such among the rights and freedoms guaranteed by the Convention or its Protocols, see *inter alia Kyrtatos v. Greece*, no. 41666/98, 22 May 2003, § 52; *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, 8 July 2003, § 96; and *Atanasov v. Bulgaria*, no. 12853/03, 2 December 2010, § 66.

(79) The Court is not bound by interpretations given to similar instruments by other bodies, having regard to the possible difference in the contents of the provisions of other international instruments and/or the possible difference in role of the Court and the other bodies, see *Caamano Valle v. Spain*, no. 43564/17, 11 May 2021, §§ 53-54. For example, the establishment of extra-territorial jurisdiction under the Inter-American Human Rights Convention must be understood based on the differences in both the convention text and the approach chosen by the Court of the Inter-American Human Rights Convention in light of rights pertaining to indigenous and tribal peoples.

(80) None of the referenced treaty material called upon by the third-party interveners evidence a right to a healthy environment as a rule of customary international law. For example, the Government refer to the statement made by Ambassador Smith, permanent Representative of Norway, on behalf of the outgoing Government, at the Human Rights Council 48th session regarding the Un Human Rights Council resolution 8 October 2021. The Ambassador stated that the resolution sends "a strong and important message on the necessity of a clean, healthy and sustainable environment for the full enjoyment of existing human rights", but that it is "Norway's view that the political recognition through this resolution of the right to a clean, healthy and sustainable environment does not have legal effects and thus cannot be used as a legal argument." Similar statements were made on behalf of other countries, such as the UK.[24]

Annex 1: Statement by Ambassador Smith 8 October 2021

(81) The resolution cannot be seen as a reflection of customary international law, and it does not have any bearing on the content of the obligations arising from the Convention.

(82) When voting in favour of the adoption of a resolution on clean, healthy, sustainable environment of 28 July 2022, Norway reiterated its view in the UN General Assembly. First Secretary Katrine Ørnehaug Dale, stated in her explanation to the vote *inter alia* that:

> *"This resolution sends a strong and important message on the necessity of a clean, healthy and sustainable environment for the enjoyment of existing human rights. It is Norway's view that the political recognition through this resolution does not have any legal effects and thus cannot be used as a legal argument."*

[24] https://www.gov.uk/government/speeches/un-human-rights-council-48-explanation-of-vote-on-the-right-to-a-safe-clean-healthy-and-sustainable-environment

Annex 2: Explanation of vote by First Secretary Katrine Ørnehaug Dale to the General Assembly after adoption of the resolution on clean, healthy, sustainable environment, 28 July 2022

4 CONCLUDING REMARKS

(83) The Government upholds the application is inadmissible, as the complaint is incompatible with the Convention's provisions and/or manifestly ill-founded; or in the alternative, that there has been no violation of the Convention.

(84) Given the gravity of the looming climate crisis, it is crucial to instigate swift, decisive and concerted climate action, while at the same time ensuring that decisions have sufficient democratic legitimacy.

(85) To that end, the measures called for by the applicants and several of the third-party interveners in the present case should remain policy decisions for each Contracting State to take according to its domestic laws and democratic processes within the framework of the international climate change regime.

(86) The Government of Norway is deeply committed to the efforts in reducing emissions and finding solutions to the global problem of climate change.

• • •

Oslo, 15 September 2022

OFFICE OF THE ATTORNEY GENERAL
FOR CIVIL AFFAIRS

Henriette Busch
co-agent

Gøran Østerman Thengs
advocate