

Application to the European Court of Human Rights

E. Statement of the facts

1. The applicant is one of six Greenpeace Nordic activists who participated in a non-violent direct action protest in the port area of Preemraff Lysekil on 13 September 2020, and were subsequently sentenced to a suspended prison sentence of one month and 40 day-fines. The other five activists are filing concurrent applications.

BACKGROUND

2. Preemraff Lysekil is a refinery owned by Preem AB, located at Brofjorden near the Swedish city of Lysekil. In 2016, Preem AB applied for a permit to expand the refinery. If completed, the project would have greatly increased emissions of various pollutants from the refinery. Notably, it would have added about a million tonnes of CO₂ per year, making Preemraff Lysekil the largest point source of greenhouse gas emissions in Sweden.

3. Preem AB's expansion plans became a major rallying point for the climate movement in Sweden, with several legal actions filed against the issuance of the permit, and various groups, cooperating through the network "Stoppa Preemraff", conducting weekly protest actions for a period in 2020.

3. These protests culminated in a series of actions in the Preemraff Lysekil port area on 10-13 September 2020. At 19:30 on the 10th of September, the Greenpeace International-operated vessel Rainbow Warrior positioned itself in Brofjorden, blocking all tanker traffic to and from the refinery. It remained there until the morning of Saturday, September 12th.

4. Early the next day, i.e. on Sunday, September 13th, the group of six Greenpeace Nordic activists including the applicant entered the Preemraff Lysekil port area on board two rigid hull inflatable boats (RHIBs), ahead of the arrival of a crude oil tanker named the Grena Knutsen.

5. The activists proceeded to climb rescue ladders to reach a ramp adjacent to the unloading area. There, they were met by Preemraff's area manager, responsible for loading and unloading operations at the site. He informed them they were trespassing, and they discussed certain safety aspects with him. Three of the activists - Sini Sareela, Karienne Opgård Andersen and Johanna Grant Axén - used climbing equipment to climb up a bunker boom, where they displayed banners reading "Paris or Preem?" and "People vs. Oil". The remaining three - Anna Borhagen, Julia Hedberg and Fanny Sannerud - remained on the ramp below. All six activists were arrested (gripen) without resistance at 08:45; the applicant was formally detained (anhållen) on the same day at 14:56, and released the next day at 15:27, having spent a little under 31 hours in custody.

6. In line with Greenpeace principles, the action had been carefully planned, with a view to ensuring the safety of activists, staff and equipment in the area. The activists mounting the bunker boom were experienced climbers, and all the activists used ATEX-classified equipment designed for work in potentially explosive atmospheres. They also carried measuring equipment to ensure that they were not exposed to any hazardous substances when staying in the area.

7. On 28 September 2020, two weeks after the protest action, Preem AB announced it was scrapping plans for the expansion of Preemraff Lysekil, and would instead focus on the production of renewable fuels at the refinery.

DOMESTIC LEGAL PROCEEDINGS

8. The six activists were charged with an offence of trespass to a protected site (obehörigt tillträde till skyddsobjekt), under Section 7(1) and Section 30(1)(1) and (2) of the Installations Protection Act (2010:305) (Skyddslag). Their case was heard at the Uddevalla District Court (Uddevalla tingsrätt) on 6 December 2023, as case B 2467-20.

9. On 20 December 2023, the Uddevalla District Court issued its judgment (Annex 1). It found that while the unloading of the tanker Grena Knutsen had been slightly delayed by the protest action, there was no evidence that the refinery had suffered any financial damage. It also saw no grounds to find that the activists had failed to take adequate safety measures, or had endangered safety in the area. Nevertheless, it deemed the activists "objectively guilty" of trespass to a protected site. It rejected the activists' invocation of a state of necessity (nöd) resulting from the climate crisis. The District Court sentenced each of the six activists to a two-month suspended prison sentence and 40 day-fines, citing the absence of a concrete safety risk, the absence of any interruption of production, and the delay in bringing their case to trial as mitigating factors. The six activists were also ordered to pay a statutory fee to the Crime Victims Fund (brottsofferfonden).

10. On 10 January 2024, the six activists lodged an appeal with the Court of Appeal for Western Sweden (Hovrätten för Västra Sverige) (Annex 2). As well as renewing their argument on the state of emergency, the activists argued that the District Court judgment should be set aside as incompatible with Articles 10 and 11 of the Convention, citing key principles that emerge from the European Court of Human Rights' case-law under these articles. Furthermore, they pointed to the delay in the legal proceedings. They sought acquittal, or, in the alternative, remission of penalties; or, in the further alternative, the setting aside of the suspended prison sentence; and the setting aside of the order to pay compensation to the Crime Victims Fund. The hearing took place on 13 November 2024.

11. By judgment of 27 November 2024 (Annex 3), B 1458-24, the Court of Appeal for Western Sweden upheld the lower court's judgment. It agreed with the District Court that the protest action had caused only limited hindrance, and that there was no proof it had jeopardised safety. The Court of Appeal held that the protest action, which was intended to influence public opinion, did not contribute in sufficiently concrete and immediate way to averting the climate crisis to be permitted on the grounds of a state of necessity. It did not engage with the

activists' argument under Articles 10 and 11 of the Convention, other than stating that "...the act is not exempt from liability on the grounds of putative (imagined) necessity, nor on the grounds of freedom of expression and demonstration, or on any other grounds." The Court of Appeals considered that two months' imprisonment was not manifestly unreasonable, but reduced the penalty by one month, on the ground that it had taken three years for proceedings before the District Court to conclude, and the requirement for a trial within a reasonable time under Article 6 of the Convention had thus been violated. The Court of Appeals left the order to pay 40 day-fines and to pay compensation to the Crime Victims Fund in place.

12. On 20 December 2024, the six activists sought leave to appeal to the Supreme Court (Högsta Domstolen) (Annex 4). The case was assigned number B 9951-24. The Supreme Court twice granted extensions of the time-limit to file the elaboration of the grounds for the request for leave to appeal, which were submitted in a timely manner on 17 February 2025 (Annex 5). The activists again renewed and further developed their arguments concerning the existence of a state of necessity, and - relevantly - argued in detail that the Court of Appeal had failed to apply standards which were in conformity with the principles embodied in Articles 10 and 11 of the Convention, and had failed to adduce "relevant and sufficient reasons" to justify the necessity in a democratic society of convicting them. They also argued in detail that a correct application of the standards required by the Convention could only have led to the conclusion that the sanctions imposed on the six activists were not "necessary in a democratic society", and that they should have been acquitted, or at least discharged without a penalty.

13. On 26 May 2025, the Supreme Court denied the petition for leave to appeal, stating simply that on review of the materials, it had not found grounds to grant leave to appeal (Annex 6).

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

Article invoked: Violation of the right to freedom of expression (Article 10)

1. The issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case. The applicant is mindful that the Court's usual approach is to examine cases involving direct action protest under Article 10, interpreted in the light of Article 11 (e.g. *Bumbeș v. Romania*, 18079/15, paras. 67-70). The applicant thus relies on Article 10, but will cite to relevant jurisprudence under Article 11.

2. The applicant's direct action protest constituted an expression of opinion protected by Article 10 of the Convention (*Bryan and Others v. Russia*, 22515/14, paras. 83-86).

3. By arresting, detaining, criminally prosecuting and convicting the applicant, and by imposing sanctions imposed on her, the domestic authorities interfered with the exercise of her rights under Article 10 (*Id.*, para. 96).

== Conviction not supported by relevant and sufficient reasons ==

4. While the applicant formally trespassed on a protected site, an unlawful situation does not necessarily justify an interference with a person's right to freedom of assembly, and domestic authorities are required to show a degree of tolerance towards peaceful gatherings (*Navalnyy v. Russia*, 29580/12 and 4 others, para. 143). The combined circumstances of the applicant's protest called for a particularly high degree of tolerance:

a. The protest concerned climate change, "one of the most pressing issues of our times" (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 53600/20, para. 410). "Very strong reasons" are required for justifying restrictions on expression regarding "serious matters of public interest" (*Primov and Others*, 17391/06, para. 134).

b. The applicant was acting in the framework of a well-known NGO, a social watchdog warranting particular protection under the Convention (*Magyar Helsinki Bizottság v. Hungary*, 18030/11, para. 166).

c. Demonstrators have a presumptive right to choose the time, place and manner of conduct of a protest and to demonstrate "within sight and sound" of their target (*Lashmankin and Others v. Russia* 57818/09 and 14 others, para. 405), a right which takes on special weight when, as in this instance, the chosen site holds clear symbolic importance (*United Civil Aviation Trade Union and Csorba v. Hungary*, 27585/13, para. 29).

d. The target of the protest was a large company. Such companies "inevitably and knowingly lay themselves open to close scrutiny of their acts and ... the limits of acceptable criticism are wider in the case of such companies" (*Steel and Morris v. United Kingdom*, 68416/01, para. 94).

e. The protest was entirely peaceful. "A peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction" (*Pekaslan and Others v. Turkey*, 4572/06 and 5684/06, para. 81).

f. The prosecution failed to prove that the protest caused meaningful hindrance or a safety risk. Where "no compelling consideration relating to public safety, prevention of disorder or protection of the rights of others [is] at stake ... the need to punish unlawful conduct ... is not a sufficient consideration in this context, in terms of Article 10 of the Convention" (*Novikova and Others v. Russia*, 25501/07 and others, para. 199).

5. Thus, the domestic courts were required to adduce particularly "relevant and sufficient" reasons demonstrating a "pressing social need" to convict the applicant (*Kudrevičius and Others v. Lithuania* [GC], 37553/05, para. 143). They failed to do so; indeed, they dismissed the applicant's arguments under Article 10 without any analysis. The conviction was thus not shown to be "necessary in a democratic society".

== Sanctions disproportionate ==

6. Particularly "relevant and sufficient" grounds were also required to demonstrate the proportionality of the criminal sanctions imposed on the applicant, for all the reasons stated above, and because "a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion" (Kudrevičius and Others v. Lithuania [GC], 37553/05, para. 149).

7. The domestic authorities did not demonstrate any reprehensible act; on the contrary, as noted, they found no grounds to question that the applicant had acted peacefully, safely and caused a minimum of inconvenience.

8. The interference with the applicant's right is all the more significant, since the sanctions imposed by the domestic authorities include a custodial sentence, albeit suspended. "[I]n principle, peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence" (Mariya Alekhina and Others v. Russia, 38004/12, para. 227). "[T]he imposition of a prison sentence ... has a particularly powerful chilling effect on the exercise of freedom of expression" (Bouton v. France, 22636/19, para. 46). A prison sentence "in the context of a political or public-interest debate will be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances ... for example, in the case of hate speech or incitement to violence." (Id., para. 53). "[A] prison sentence ... even when suspended, cannot be regarded as the "lightest possible" sanction" (Id., para. 54).

9. The judgments of the domestic courts state no reasons for the imposition of a custodial sentence. The District Court in fact confined itself to justifying why it was not imposing a longer sentence, citing a number of mitigating factors; the Court of Appeal simply stated that it considered two months in prison appropriate, "based on an overall assessment of the circumstances". It did not elaborate on which circumstances it had in mind, much less did it identify "exceptional circumstances" that would be required under Article 10 of the Convention to justify a prison sentence. While it reduced the sentence to one month, it did so on account of the excessive delays to the procedure, not the disproportion of the sanction.

10. It is also relevant to note that these sanctions came after the applicant had already spent close to 31 hours in custody following the protest action.

11. The sanctions - the suspended prison sentence, 40 day-fines, and order to pay statutory fee to the Crime Victims Fund - are not supported by "relevant and sufficient" reasons demonstrating a "pressing social need". Thus, they are not shown to be proportionate and therefore not "necessary in a democratic society".

12. The applicant wishes to emphasise that the imposition of criminal liability and of significant criminal sanctions without any demonstrated necessity is liable to have a serious chilling effect on peaceful protest on the subject of climate change, which, as noted, is one of the most pressing issues of our time.