ATTORNEY GENERAL FOR CIVIL AFFAIRS

To the European Court
of Human Rights

OSLO, 26.04.2022

Written 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, GREEENPEACE NORDIC and Others v. Norway

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1 INTRODUCTION AND SUMMARY

1.1 Background

(1) Reference is made to the Court's letter 10 January 2022 in which the Court invited the Government of the Kingdom of Norway to present its observations on the admissibility and merits of application no. 34068/21 *Greenpeace Nordic and Others v. Norway,* as well as respond to the Court's questions to the Parties. Reference is also made to the Court's letter of 8 April 2022 granting an extension of the time-limit to 26 April 2022.

(2) Two organizations (party to the domestic proceedings) and six individuals (not party to the domestic proceedings) complain that a decision to award production licences in 2016 violated the Convention rights of six individual applicants, as well as the procedural rights of the organizations, and – at least to some extent – the rights of future generations.

(3) The impugned decision, as well as the preceding decision to open the Barents Sea Southeast for petroleum activities in 2013, were made in the hopes of finding large reservoirs of

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natural gas.[1] The impugned decision, as well as the preceding opening decision, did in themselves not involve any significant environmental risks and any actual production would be subject to further impact assessment and approval by the authorities.

(4) All of the licences awarded in the 23rd licensing round have since been relinquished, meaning that there will not be any emissions from future petroleum activities or combustion of petroleum as a result of the impugned decision.

(5) The application calls for the Court's review of a judgment issued by the Norwegian Supreme Court 22 December 2020. Sitting as a plenary court of 15 justices, the Supreme Court dismissed the organizations' appeal. The Supreme Court unanimously held that the impugned decision had not violated the substantive aspects of section 112 of the Norwegian Constitution, nor did the court find grounds for any violation of Articles 2 and 8. In relation to the preceding 2013 decision by the Norwegian Parliament ("the Storting") to open the south-eastern part of the Barents Sea for petroleum activities, the Supreme Court moreover unanimously held that no significant procedural errors had been made concerning the economic prospects prior to the opening nor the fall in oil prices subsequent to the opening. Finally, the Supreme Court held, 11 to 4, that it was not a procedural error that the impact assessment carried out prior to the 2013 opening decision had not described the potential climate change impacts of future combustion of petroleum found, produced and exported from that area.

1.2 Summary

(6) Climatic changes are already occurring due to anthropogenic emissions. Climate change will have serious and irreversible impacts on nature and society throughout the world. This is stated by the IPCC and the findings are not in dispute. Climate change is a global problem that needs to be solved at a global level, while at the same time countries need to pursue domestic mitigation measures. International cooperation and international agreements such as the UN's sustainability goals and Paris Agreement is key. In this regard, Norway has been a promoter and supporter of international agreements. The Government is deeply committed to contribute to solve the world's climate and energy challenge, and to do its part in reaching the long term temperature goal of the Paris Agreement. Safeguarding the well-being of present and future generations requires that modern societies strive to prevent environmental degradation, adapt to a changing climate, and continue their vigorous and concerted efforts to reduce greenhouse gas emissions.

(7) States with economies that are largely dependent on the production and export of oil and natural gas (petroleum), have to grapple with how to approach climate change related risk

[1] Cf. Meld. St. 36 (2012-2013) (Norwegian only) p. 24, which is the report to the Norwegian Storting regarding the opening of the area for petroleum activities.

associated with the production and export of oil and natural gas.[2] Norway actively supports a green transition, and aims to build on the world-leading competence from the oil and gas industry in new sectors, such as offshore wind power, hydrogen, carbon capture and storage and green shipping. Emissions from oil and gas production on the Norwegian continental shelf are declining and emissions per unit produced are lower compared to the average of other petroleum producing countries. The Government of Norway intends to cooperate with the industry to reduce greenhouse gas emissions from the Norwegian continental shelf by 50 per cent by 2030 and to net zero by 2050.

(8) While agreeing on the broad facts of global climate change, the disagreement between the parties has been, and continues to be, how Norwegian society should approach the petroleum and climate policy. The applicants have legitimate political opinions as to how Norway should respond to the climate crisis. Their political views regarding the phase out of Norwegian petroleum industry (through the cessation of awarding new production licences) are shared by several of the politicians in the Norwegian parliament, but at present far from a majority. Political considerations in this area also depend, in part, on how one assesses the likelihood that a phase out of Norwegian petroleum production and export will lead to net emission reductions globally and thus actually reducing the risk imposed by climate change. It also depends on how one views the negative societal effects of curbing the access to oil, and in particular natural gas, before a sufficiently stable renewable energy supply is available.

(9) The recent energy crisis in Europe has demonstrated the continued dependence on reliable, democratic energy suppliers – such as Norway – to provide stable energy supply, in particular natural gas, for some time to come. On February 2 2022, the EU Commission approved in principle *Complementary Climate Delegated Act* on climate change mitigation and adaption, that adds certain gas and nuclear activities in the list of economic activities covered by the EU taxonomy, subject to strict conditions. For gas in particular, the main conditions are that the activities replace high-emitting energy sources, such as coal, and fully switch to renewable or low-carbon gases by December 2035. The Complementary Delegated Act is currently under scrutiny by co-legislators.

(10) Europe's need for a stable and predictable supply of energy has recently been further underlined by Russia's instrumentalization of energy and demonstrated willingness to take any measures necessary to achieve their own geopolitical goals, including waging war against a neighboring country. In a statement 23 February 2022 from President von der Leyen of the European Commission, Norway's role as a "reliable supplier of gas" was highlighted in connection with Europe's effort to "get out of the dependency on Russian

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[2] See further NOU 2018: 17 Klimarisiko og norsk økonomi (Norwegian only) relied on by the Supreme Court in its summary of climate change science and how climate change may impact Norway. The IPCC has also released three recent Working Group contributions to the IPCC Sixth Assessment report. See Working Group I (9 August 2021); Working Group II (28 February 2022) and Working Group III (4 April 2022).

gas".[3] In 2019, Norway was the second largest exporter of natural gas to the EU with a share of 16,2 %, the largest being Russia with a share of 41,1 %.[4] On 8 March 2022, the Commission proposed an outline for a plan to make Europe independent from Russian energy supply, introducing a series of measures that may reduce EU demand for Russian gas by two thirds before the end of the year.[5]

(11) This is a relevant context in which Norway strives to balance both its role as a stable, predictable, democratic supplier of energy, while at the same undertaking a wide range of efforts both domestically and abroad in order to accelerate the necessary transition to renewable energy sources. This was also the relevant context presented before the Norwegian Supreme Court during the oral hearings, contrary to the impression one might get from para. 21 of the applicants' "statement of facts", where only a selected excerpt of a longer oral statement is referenced, thereby leaving a skewed impression of the statement.

(12) In the Government's view, there is no basis in neither the Convention's text nor the case law of the Court to hold that there is a sufficiently clear link between the impugned decision and a risk of adverse effects on individuals protected by the Convention. The Convention's provisions were not intended to provide guidance on general, global environmental issues. Other instruments are better equipped to do so. These instruments also express the common ground as to how far European states consider it appropriate for legal norms to bind their approaches to climate change. In Norway, the domestic climate change act follows up on this through legally binding domestic mitigation goals and a system through which these goals, and the progress towards reaching them, are to be periodically reviewed.

(13) The Government respectfully invites the Court to find that the complaint is inadmissible or that there has been no violation.

(14) In the Government's view, the application is inadmissible on several grounds:

i. neither the organizations nor the individual applicants are 'victims' within the meaning of Article 34 of the Convention; and the complaint is effectually an *actio popularis* for which there is no established exception;
ii. the individual applicants have not exhausted domestic remedies pursuant to Article 35 § 1; and the Convention's provisions are not applicable

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[3] Statement by President von der Leyen with Norwegian Prime Minister Støre 23 February 2022, available here.
[4] Eurostat, «From where do we import energy?", available here.
[5] See press release 8 March 2022, "REPowerEU: Joint European action for more affordable, secure and sustainable energy", stating *inter alia*: *"Phasing out our dependence on fossil fuels from Russia can be done well before 2030. To do so, the Commission proposes to develop a REPowerEU plan that will increase the resilience of the EU-wide energy system based on two pillars: Diversifying gas supplies, via higher Liquefied Natural Gas (LNG) and pipeline imports from non-Russian suppliers, and larger volumes of biomethane and renewable hydrogen production and imports; and, reducing faster the use of fossil fuels in our homes, buildings, industry, and power system, by boosting energy efficiency, increasing renewables and electrification, and addressing infrastructure bottlenecks."*

iii. the general complaint against Norwegian petroleum and climate policy is outside the scope of the case before the Court; and
iv. the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 § 3 (a).

(15) If the complaint is considered admissible in whole or in part, and presupposing that the Convention's provisions are considered applicable, the Court should find that there has been no violation of the Convention. If the Convention's provisions are to be considered applicable in a case like this, both the character of the subject matter (climate change and energy policy) and the fundamental features of the Convention (the balancing of individual rights against societal interests, and procedural safeguards to promote this balancing exercise), imply a wide margin of appreciation for the Contracting States both in terms of the choice of measures and the structuring of procedures.

2 THE FACTS OF THE CASE

2.1 Introduction

(16) Section 1 of the applicants' Additional Submission contains the applicants' "Statement of Facts". In the Government's view, this statement is limited regarding the facts of the case before the Supreme Court of Norway and is largely argumentative and adapted to the applicants' legal claims before the Court. Therefore, the statement cannot be used as a factual basis for the Court's consideration of the merits of the case.

(17) The individual applicants – who were not parties in the domestic court proceedings – have also submitted individual statements regarding the effect that the climate crisis in general has on their lives. As the individual applicants were not part of the domestic proceedings, their statements cannot serve as a factual basis for the Court's consideration either.

(18) Insofar as regards the facts of the case before the domestic courts, the Government refers to the statement of facts rendered by the Supreme Court. The Supreme Court has made available an official translation of the judgment. For the sake of good order, the Government observes that the official translation differs from the unofficial translation enclosed with the application. The Government will in the following refer to the official translation, enclosed herewith:

> **Annex 1:** The Supreme Court of Norway's plenary judgment of 22 December 2020 (HR-2020-2472-P) [official translation]

(19) A brief overview of the subject matter is given in §§ 2-5 and an overview of the court proceedings is given in §§ 6-19. In §§ 49-55 the Supreme Court describes challenges concerning global warming. A brief, general description of the domestic regulation of petroleum activities until production is provided in §§ 65-70, while the factual circumstances regarding the impugned decision (the 23rd licensing round) are described in §§ 71-77.

(20) Below, the Government highlights, and to some degree expands upon, the most important factual aspects of relevance when assessing the case.

2.2 Background on the opening of the Southeast Barents Sea (2013) and the 23rd licensing round (2016)

(21) A broad impact assessment is required prior to opening a new area for petroleum activities, see section 3-1 of the Petroleum Act and its associated provisions in the Petroleum Regulation chapter 2a. This impact assessment is conducted by public authorities, based on a programme subject to a public consultation. The findings from the impact assessments are summarised in an impact assessment report, which is also subject to public consultation, see also §§ 65-70 of the Supreme Court's judgment.

(22) In the process leading to the opening of the Barents Sea Southeast, both the impact assessment programme and the subsequent impact assessment report were subject to public consultation.[6] The impact assessment report, the remarks made during the public consultation and a response from the Ministry of Petroleum and Energy[7] were all enclosed in the orientation paper submitted to the Storting in Meld. St. 36 (2012–2013), as mentioned by the Supreme Court in § 231.

(23) As observed by the Supreme Court (majority) in § 208, the impact assessment describes scenarios for emissions related to scenarios for future production in this area.[8] The scenarios were based on a report regarding the resource potential for the area, estimating that the area would yield more gas than oil.[9] As noted by the Supreme Court majority, the impact assessment/report does not explicitly describe scenarios for emissions stemming from combustion of these quantities of petroleum ('downstream' emissions).[10]

(24) The impact on climate change was brought up in the public consultations regarding the impact assessment programme as well as in the finalized impact assessment report. In relation to the impact assessment programme, the applicant organizations (and others) remarked that an increase in petroleum activities would not be compatible with Norway's

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[6] See the impact assessment programme available in Norwegian here and the impact assessment is available in Norwegian here.
[7] Available in Norwegian here.
[8] See section 2.1 of the impact assessment, cf. footnote 6 above. One of the underlying scientific reports regarded ordinary airborne emissions, and calculated upstream emissions of a variety of greenhouse gases, based on the scenarios developed by the Petroleum Directorate (see summary 4.3.3). It does not assess the effects on the global climate. See the report "Konsekvenser av regulære utslipp til luft», available here.
[9] See p. 5-6 of the report "Kartlegging og ressursberegning, Barentshavet sørøst", available in Norwegian here.
[10] Impacts from global climate change were addressed, but in the context that this global phenomenon constituted a larger threat to the local environment than the petroleum industry, see p. 71 of the impact assessment, cf. footnote 6.

national and international climate change obligations. They did not specify whether they referred to emissions in Norway or abroad.[11]

(25) In their comments to the impact assessment, the applicant organizations (together with other organizations) made reference to the reports by the IPCC and stated that they considered the opening of a new area as a move in the wrong direction, with emphasis on the national target of 20 % reduction in domestic emissions by 2020.[12] They reiterated that they considered an opening of the Barents Sea Southeast as a violation of Norway's international climate change obligations, without specifying further.[13] Their arguments relating to domestic and international climate change obligations seem to stay within the context of future *domestic* emissions from petroleum activities (while also criticizing Norwegian authorities for 'betting' on the international climate change regime failing so that Norway may continue its petroleum exports in the future).[14]

(26) As observed by the Supreme Court majority (§ 232), the Ministry's response to the remarks in the public consultation included references to the general climate change policy of the Government at that time and the compromise between the parties in the Storting in 2012.[15] As the Supreme Court minority remarks, this general policy did not expressly address downstream (combustion) emissions abroad.

(27) In Meld. St. 36 (2012–2013) on the opening of the Barents Sea Southeast, climate change is mentioned several times. The report emphasizes that a transition from coal to gas in many countries will provide for significant reductions in greenhouse gas emission and that there is an overarching need for a stable energy supplier such as Norway.[16] The report acknowledges that future petroleum demand and prices will be sensitive to both economic prospects and climate change policies globally. While recognizing that climate change policies consistent with the target of limiting global warming to 2°C (the global aim prior to the Paris Agreement) will lead to a reduction in demand for Norwegian oil, the report emphasizes that the opposite will be the case for Norwegian gas. The report notes specifically that EU states will be depending on increased imports of Norwegian gas in the coming years, highlighting gas as a climate friendly substitute for coal.[17]

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[11] Available in Norwegian here, see p. 48-49.
[12] Section 4 of their comments, p. 8, available in Norwegian here.
[13] Section 4A of their comments, available in Norwegian here.
[14] The organizations referred to the surplus of quotas in the European Emission Trading System (ETS) and the estimate made by the EIA in 2012 that 75% of discovered fossil energy resources would have to remain unexploited in order to stay within the 2C target. See section 7, available in Norwegian here.
[15] This policy document was in turn based on the IPCC's reports, which refers extensively to the link between global climate change and emissions, and the need for emission reductions. In the appendix to the report regarding the opening decision, the Ministry also made reference to the EU ETS (see the judgment § 232).
[16] Available in Norwegian here, see p. 7.
[17] *Ibid*., p. 8, which is of particular relevance in light of the recent energy/gas crisis in Europe and the EU Commission's proposal that investments in gas be regarded as 'green' in a transitional period.

(28) As emphasized by the Supreme Court majority (see § 235 et seq), there were subsequent debates in the Norwegian parliament (the "Storting"), both in the committee in charge of preparing the case and in the plenary Storting, where global climate change and Norway's contribution to global warming through petroleum export was on the agenda. In relation to the broader debate, the proposals to phase out Norwegian petroleum activities or cancel specific licensing rounds failed to secure support in the Storting) during the parliamentary debate 25 April 2017. The primary reasons being the role that the petroleum sector has in the Norwegian economy and that one expects there to be some room for petroleum (oil and gas) also in a low carbon economy, see § 237 of the judgment with further reference to Innst. 258 S (2016-2017) p. 3.

2.3 The scope of the case before domestic courts

(29) The applicant organizations' domestic lawsuit was admissible due to a special provision in the Norwegian Dispute Act allowing organizations to "bring an action in its own name in relation to matters that fall within its purpose and normal scope", cf. § 1-4 of the Act.[18] The organizations did not include any individuals as plaintiffs, and their submissions to the domestic courts were based on submissions made on behalf of the population as a whole.

(30) In the domestic court proceedings, "the crux of the matter" was the "interpretation of Article 112 of the Constitution and to which extent it confers substantive rights on individuals that may be assessed in court", cf. the Supreme Court § 3. Article 112 reads as follows:

> *Every person has the right to an environment that is conducive to health and to a natural environment whereby productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations, which will safeguard this right for future generations as well.*
>
> *In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.*
>
> *The authorities of the state shall take measures for the implementation of these principles.*

(31) The Norwegian Constitution also contains a general obligation on the authorities to respect and secure human rights, as they transpire in the Constitution and in treaties which are binding on Norway (Article 92). Articles 93 and 102 correspond, broadly speaking, to ECHR Articles 2 and 8. It should also be mentioned that the ECHR and several other human rights treaties have been adopted as Norwegian law through the Human Rights Act of 1999 ('Lov

[18] Section 1-4 also requires that the general conditions of section 1-3 of the Act are otherwise satisfied.

om styrking av menneskerettighetenes stilling i norsk rett'), stipulating that other laws will be set aside should they conflict with these rights.

(32) Before the District Court, the organizations did not claim that the impugned decision violated the Convention, and this was first introduced as new and alternative grounds for invalidity before the High Court, see the Supreme Court § 11. The appeal to the Supreme Court was limited to Article 112 of the Constitution, but a reservation was made to invoke Art. 2/8, and this was done during the oral hearing, see Supreme Court § 14. During the oral hearings, claims relating to the Convention made up a significantly lesser part of the applicant organizations' arguments. This is evident both from the Supreme Court's rendition of the organizations contentions §§ 20-34, where the Convention grievances are summarized in § 29, and from the written dispositions used by the applicant organizations' legal counsel during the oral hearings.

Annex 2: The applicant organizations' written disposition before the Supreme Court

Annex 3: The applicant organizations' revised "part VI" of the written disposition before the Supreme Court

(33) As regards the applicant's arguments concerning procedural errors before the domestic courts, the Government recalls that the applicant organizations explicitly did "not claim that the same errors were made when awarding the licences in the Barents Sea south", cf. the Supreme Court §§ 14 and 179. 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.

(34) The organizations did not invoke Article 14 before domestic courts.

2.4 Brief summary of the Supreme Court's decision

(35) In interpreting the positive and negative obligations under Article 112 of the Constitution, the court discussed the judiciary's role in environmental matters, emphasised the significance of the Storting's debates concerning the decisions at issue, and stated, inter alia, that:

> *(141) On the one hand, obvious rule-of-law considerations suggest that the courts must be able to set limits on the political majority when it comes to protecting constitutionalised values. On the other hand, decisions involving basic environmental issues often require a political balancing of interests and broader priorities. Democracy considerations also suggest that such decisions should be made by popularly elected bodies, and not by the courts.*
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> *(142) Against this background, Article 112 of the Constitution must, when the Storting has considered a case, be interpreted as a safety valve. In order for the courts to set aside a legislative decision, the latter must have grossly neglected its duties under Article 112 subsection 3. The same must apply for other Storting decisions and*

decisions to which the Storting has consented. Consequently, the threshold is very high.

(143) Against the background of the parties' contentions before the Supreme Court, I mention that these duties may involve both positive and negative measures. The purpose of the constitutional provision would largely be lost if the provision does not also involve a duty to abstain from decisions violating Article 112 subsection 3.

(144) In other words, Article 112 of the Constitution is not merely a declaration of principle, but a provision with a certain legal content. However, one can only to a limited extent build directly on a constitutional provision in a case before the court.

(145) For an administrative decision in which the Storting has not been involved, Article 112 of the Constitution will have relevance as an interpretative factor and as a factor in the exercise of discretion. Apart from this, the case gives no cause to elaborate further on how thoroughly such decisions should be reviewed."

(36) Considering the merits of the appeal under the substantive aspects of Article 112 of the Constitution, the Supreme Court unanimously concluded that there had been no violation, see the individual assessment in §§ 157-163:

(157) When a production licence follows directly from the Storting's endorsement of the opening of the relevant areas, there is little left for the Supreme Court to control. The decision may then only be invalidated under Article 112 of the Constitution when the duty under subsection 3 is seriously neglected. I find it clear that this strict condition is not met, and will therefore only briefly comment on the measures implemented in the climate and environment area:

(158) A number of general and individual measures have been implemented to reduce the national greenhouse gas emissions. Among them are the levy of CO_2 tax, investment in renewable energy, support of technology for carbon capture and storage, support of green technology and green transition in general, and not least the joining of the EU Emissions Trading System.

(159) When it comes to greenhouse gas emissions from combustion abroad after Norwegian petroleum export, I believe one must accept that the Storting and the Government build their Norwegian climate policy on the division of responsibilities between states in accordance with international agreements. Here, the clear principle is that each state is responsible for combustion on its own territory.

(160) A number of measures have been taken to prevent local environmental harm. A strict safety regime applies to the Norwegian continental shelf. For instance, a separate licence is required for each exploration drilling, in which special conditions may be laid down. If profitable discoveries are made, as mentioned, a new impact assessment will be prepared in connection with applying for approval of a PDO, which may also be subject to special conditions. In Report to the Storting 41 (2012–2013) page 2, it is set

out that the drilling time will be subject to restrictions, for instance that no drilling may take place less than 50 km from the ice edge between 15 December and 15 June.

(161) As mentioned, when challenging a decision's validity, one must use that decision as a starting point. The appellants do not argue within such a scope. Their arguments are largely connected to the existing petroleum production. A key point for the environmental groups is that Norway must take a proportionally larger share of the climate cuts than other countries, because we produce oil and gas creating large emissions, and because we have the economic capacity to do so. Norway must therefore, they claim, cut at least 60 percent of the greenhouse gas emissions within 2030. The environmental groups also contend that until a detailed legal framework and climate accounts are in place, the authorities cannot commence production in new areas. It is held that the tolerance limit must be clearly stated in the planning – and that a system is required to prevent that this limit is not exceeded.

(162) It is unlikely that the courts, when assessing an individual decision, may lay down such specific requirements based on Article 112 of the Constitution. The arguments of the environmental groups imply that crucial parts of Norwegian petroleum policy, with production and export, are put to the test. These views will also affect subsequent licensing rounds, and largely involve a controlled shutdown of Norwegian petroleum production. This aspect is not a subject matter in this case.

(163) In addition, the Storting has stipulated specific targets for cuts in the greenhouse gas emissions. They are now provided in the Climate Change Act. As mentioned, the Storting and the Government have also implemented and planned several measures in order to reach the targets. At the same time, possible emissions from the southeast Barents Sea will not occur for a long time yet. As already pointed out, we are not dealing with serious negligence under Article 112 subsection 3 of the Constitution.

(37) The Supreme Court also unanimously concluded that there were no grounds for any violation of the Convention Articles 2 and 8. The Supreme Court first considered that there was no sufficiently close link between the impugned production licences and a potential loss of life in Norway to entail a real and immediate risk to life within the meaning of Article 2 of the Convention (see § 168). With regard to Article 8, the Supreme Court referred to the case law of the ECtHR (see §§ 169–170) and observed that "that there is nothing in present case law to suggest that the subject matter in climate cases will differ from that in cases concerning environmental harm in general" (§ 171). Based on the significance the ECtHR until now has ascribed to the requirement of a direct and immediate link, the Supreme Court considered it to be clear that the effects of possible future emissions due to the licences awarded in the 23rd licensing round did not fall within Article 8 of the Convention (*ibid.*).

(38) With reference to the claimants' arguments that the content of rights under the Convention could be identified on the basis of "common ground" between Member States, the Supreme Court noted that the Convention does not have a separate environmental provision and that such a common ground doctrine as applied in the case of *Demir and Baykara*, no.

34503/9712, 12 November 2008 [GC] could probably not be applicable in the same manner in the present case.[19] In any case, it had not been demonstrated that the production licences constituted a breach of Norway's international obligations (see § 174).

(39) A minority of the Supreme Court (four judges) considered that there had been a procedural error pursuant to Article 5 (2) of Directive 2001/42/EC in the opening of the southeast Barents Sea. In the view of the minority, the climate impacts from combustion of the petroleum that might be produced from the Barents Sea South-east should have been identified, described and evaluated at an overarching level, see § 274 of the judgment. The majority (11 judges) disagreed with this view.

2.5 Subsequent proceedings: All of the licences awarded in the 23rd licencing round have been relinquished

(40) At the time of the Supreme Court proceedings, all but one production licence in the southeast Barents Sea provided in the 23rd licensing round had been relinquished by the licencees, and the court was informed that the operator at the time had applied for å return of 62 percent of the area encompassed in the licence, see § 77.

(41) All of the awarded production licences awarded in the 23rd licensing round of 2016 (the impugned decision) have now been relinquished by the respective licencees, meaning that there will not be any emissions from future petroleum activities or combustion of petroleum as a result of the impugned decision.

3 RELEVANT LAW AND PRACTICE

3.1 Introduction

(42) Although the present case concerns the validity of the impugned decision and not climate change in general and Norway's efforts to combat this, the Government will in the following provide a brief overview of global climate change mitigation instruments as well as relevant domestic law and practice.

3.2 International law

3.2.1 Global climate change instruments

(43) The objective of the international climate change framework is to strengthen the global response to the threat of climate change and keeping the increase in the global average temperature to well below 2 degrees above pre-industrial levels and pursuing efforts to limit

[19] The wording in § 174 of the judgment reads "ei slik lære", which in the Government's view should be read as "such a doctrine" or "this kind of doctrine". In the official translation enclosed in appendix 1, the passage is translated into "such a principle".

the temperature increase to 1.5 degrees above pre-industrial levels, recognizing that this would significantly reduce the risk and impacts of climate change.

(44) The commitments in the international climate change framework is placed on states, and not on individuals. How states choose to meet their commitments and arrange their climate policy is subject to the states' discretion. This requires broad political considerations and is dependent on different national circumstances.

(45) In 1992 the global community of states agreed on the United Nations Framework Convention on Climate Change as the framework for international cooperation to combat climate change by limiting the average global temperature increases and the resulting climate change, as well as coping with impacts of climate change. Through negotiations at the Conference of the Parties (COP) sessions in subsequent years, more specific obligations to strengthen the global response to climate change were developed. In 1997 the Kyoto Protocol was adopted, wherein developed states listed in Annex I (among them Norway) took on specific obligations to, *inter alia*, reduce the emissions from their territories compared with 1990 as described in the Protocol's Annex B.

(46) The Paris Agreement was unanimously adopted in Paris in 2015 by the 21st COP under the UNFCCC, and entered into force on 4 November 2016. The Agreement has been ratified by 193 State Parties. In the recognition that this would significantly reduce the risks and impacts of climate change, the Paris Agreement contains a global long-term temperature target of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels (Article 2 (1) (a)).

(47) The heart of the Paris Agreement is the five-year ambition mechanism reflected in Article 4. It requires all Parties to submit a Nationally Determined Contribution (NDC) every five years, in accordance with the principles of progression and highest possible ambition. Parties have common but differentiated responsibilities and respective capabilities in the light of different national circumstances. When determining an enhanced NDC it should be informed by the outcomes of the global stock take (Article 4 (9)). The five-year ambition cycle of the Paris Agreement will ensure increased ambition over time and enables the Parties to collectively achieve the long-term temperature target of the Paris Agreement. With the aim to achieve the objectives of the NDCs the Parties shall pursue domestic mitigation measures (Article 4 (2)), but emission reductions may also be achieved through cooperation with other Parties (Article 6).

(48) The Paris Agreement does not specify any objective criteria for determining a Party's NDC, other than that it should be based on a Parties highest possible ambition and represent a progression beyond their current NDC. It is up to each Party to determine its 'highest possible ambition'. It was a clear prerequisite for the unanimous adoption of the Agreement in Paris that the determination of the NDC would remain a subject of national sovereignty. Different proposals for models of specific 'fair' burden sharing etc. were proposed and rejected during the negotiations. The Paris Agreement exhaustively reflects the adopted model, establishing a 'bottom up' system based on nationally determined contributions.

(49) To exemplify the different models which was on the table in the negotiations of the Paris Agreement, the Government refers to document from February 2015 (the so-called *Geneva text)*.[20] The Government would especially call the Court's attention to the following three rejected proposals (p. 10 ff), which did not end up in the final text of the Paris Agreement:

> *i) In accordance with the principles of the Convention and its Article 4, developed country Parties to prepare mitigation commitments differentiated from developing countries contributions, which are fair and equitable distribution of the global emission budget according to a compound index of countries' participation in such a budget, and which are transparent, comparable and/or verifiable;*
>
> *ii) "A global emission budget to be divided among all Parties, in accordance with the principles and provisions of the Convention, (…) undertaken in accordance with historical responsibilities, ecological footprint, capabilities and state of development.*
>
> *iii) Developed country Parties shall commit to undertake Absolute Emission Reduction Targets (AERTs) during the period 2021–2030, in accordance with their historical responsibility, through quantifiable, economy-wide mitigation targets, covering all sectors and all greenhouse gases, implemented domestically, which can be aggregated and which are comparable, measurable, reportable and verifiable, with the type, scope, scale and coverage more ambitious than those undertaken under the Convention and its Kyoto Protocol during the pre-2020 period, and communicated and implemented without any conditions;*

(50) The Paris Agreement ensures that the parties report and track progress on their NDCs through an enhanced transparency framework for action and support (Article 13). Each Party shall regularly provide information on emissions by sources and removals by sinks (national inventory report) and information necessary to track progress made in implementing and achieving its nationally determined contribution. These reports will also be subject to technical expert reviews.

3.2.2 Climate cooperation with the EU and Iceland through the Agreement on the European Economic Area (EEA Agreement)

(51) Norwegian climate policy is closely linked to the EU's climate change legislation through the EEA Agreement. Through Decisions of the Joint Committee under the Agreement, the EU Emission Trading Directive and other EU climate change legislation (Effort Sharing Regulation and Regulation on the inclusion of greenhouse gas emissions and removals from

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[20] Available here.

land use, land use change and forestry (LULUCF)) also apply to Norway, the latter for the period 2021–2030.

(52) Norway has been an integral part of the EU Emission Trading System (EU ETS) since 2008. The ETS sets a European cap on emissions from industry, power production, petroleum production and aviation. A strong and ambitious ETS is a cornerstone in the fulfilment of EU's and Norway's respective climate targets.

(53) The decision of the Joint Committee concerning the Effort Sharing and the LULUCF Regulations also included several legally binding reporting obligations. It obliges Norway to submit greenhouse gas inventories annually and provide information on our national policies and measures and projections every second year. The decision mandates the EFTA Surveillance Authority to conduct an annual assessment of Norway's progress towards meeting the requirements undertaken. Comprehensive inventory reviews will be carried out in 2027 and 2032 to ensure compliance with the Effort Sharing Regulation and the LULUCF-regulation.

3.3 Domestic law and practice

3.3.1 Domestic climate legislation

(54) The Government refers to the Supreme Court §§ 61-64, providing a brief overview of relevant Norwegian climate legislation:

> *(61) Act relating to Norway's climate targets – the Climate Change Act – was adopted in 2017. The Act is to promote the implementation of Norway's climate targets as part of its process of transformation to a low-emission society by 2050, see section 1 subsection. One of the targets is for greenhouse gas emissions to be reduced by at least 40 percent by 2030 compared with the reference year 1990, see section 3. The target for 2050 is that Norway is a low-emission society with emissions reduced by 80 to 95 percent from the reference year 1990. The effect of Norway's participation in the EU Emissions Trading System is to be taken into account in assessing the progress towards this target, see section 4. To promote the transformation, the Government shall every fifth year submit updated and as far as possible quantitative and measurable climate targets to the Storting, see section 5. In addition, the Government shall provide an annual account of how these targets may be achieved and of how Norway otherwise is preparing for and adapting to climate change, see section 6.*
>
> *(62) The Climate Change Act is aimed at the highest decision-making bodies in society; that is, the Storting and the Government. The Act does not lay down rights or obligations for citizens that may be enforced through legal action, see Proposition to the Storting (Bill) no. 77 (2016– 2017) pages 34 and 53. The preparatory works also specify that Norway's contribution under the Paris Agreement, see section 2 of the Climate Change Act, "is an 'economy wide' target for reduced emissions. It covers, in this respect, all greenhouse gas emissions from Norwegian territories, including*

Svalbard and Jan Mayen, and from the activities on the Norwegian continental shelf", see the Proposition page 53.

(63) The Norwegian Act relating to greenhouse gas emission allowance trading and the duty to return emission allowances – the Greenhouse Gas Emission Trading Act – was adopted in 2004. The purpose of this Act is to limit the greenhouse gas emissions in a cost-efficient manner by means of a duty to surrender greenhouse gas emission allowances and freely transferable emission allowances, see section 1 subsection 1.

(64) Norway has several other climate-related Acts, including the Environmental Information Act, the Nature Diversity Act, the Pollution Control Act, the Petroleum Act and the CO2 Tax Act. In addition, Norway has a large number of regulations for protecting the environment and ensuring petroleum production safety. Management plans are being prepared for the marine areas. Petroleum production must be carried out in accordance with plans for the designated area. There was previously a separate management plan for the Barents Sea and the marine areas off Lofoten islands. The most recent management plans, from April 2020, are compiled in Report to the Storting 20 (2019–2020).

3.3.2 Domestic policies and measures

(55) Norway has a broad variety of domestic greenhouse gas mitigation measures. Reference is made to the description of the Norwegian policymaking process, domestic and regional programmes and legislative arrangements, as well as enforcement and administrative procedures in section 4.1 and 4.2 of Norway's Seventh National Communication under the UNFCCC.[21] Reference is also made to the general overview of mitigation actions and their effects, section 4.1 in the Fourth Biennial Report:[22]

> *The polluter pays principle is a cornerstone of the Norwegian policy framework on climate change. Our policies are designed to yield the greatest possible emission reductions relative to cost, and should result in emission reductions both in Norway and abroad. Furthermore, our policy will be based on the responsibility to help safeguard the planet and on the precautionary principle.*
>
> *General policy instruments are a key element of domestic climate policy. Cross-sectoral economic policy instruments that put a price on emissions (i.e. the CO2 tax and the emission trading system) form the basis for decentralised, cost-effective and informed actions, where the polluter pays. In areas subject to general policy instruments, additional regulation should as a main rule be avoided. At the same time, the possibility of employing other policy instruments in addition to emission trading and taxes is to be continued, also in these sectors. In its White Paper on the 2030*

[21] Norway's Seventh National Communication (2018) is available here.
[22] Norway's Fourth Biennial Report is available here.

climate strategy (Meld St. 41 (2016-2017)) the Government states that it will promote the use of cost-effective mitigation measures to meet the 2030 commitment.

For non-ETS emissions, a tax on greenhouse gases would be the main mitigation measure. If the CO2 tax is not considered to be an adequate or appropriate instrument, other instruments that provide equally strong incentives to reduce emissions will be considered, including direct regulation under the Pollution Control Act and voluntary agreements.

The broad political agreement on climate of 2012, measures that are cost-effective in the light of expectations of rising emission prices over the lifetime of the investments, and which are not necessarily triggered by current policy instruments, should be given special consideration. This applies particularly to measures that promote technology development and to measures that mobilise earlier adoption by the population of consumer patterns that yield lower emissions. More than 80 percent of domestic greenhouse gas emissions are from 2013 either covered by the emissions trading scheme, subject to a CO2 tax or other taxes directed to reduce greenhouse gas emission. Certain sources of emissions may be difficult to incorporate into the emissions trading scheme or to make subject to a CO2 tax. In such cases, other instruments to reduce greenhouse gas emissions may be more appropriate.

In addition to the emission trading system and taxes, support to research on and innovation of climate-friendly technologies will provide complementary support where markets do not provide the solutions. […]

(56) In January 2021, the previous Government presented a White Paper describing its action plan for how Norway will achieve its climate target and at the same time create green growth by 2030.[23] The main policy instruments in the climate action plan are taxation of greenhouse gas emissions, regulatory measures, climate-related requirements in public procurement processes, information on climate-friendly options, financial support for the development of new technology, and initiatives to promote research and innovation. The White Paper was debated in Parliament in April 2021, and the majority in Parliament supported the main features of the climate action plan.[24]

(57) Norway's overall approach to climate change, and the choice between specific measures, is subject to continuous political debate. The Ministry of Climate and the Environment is responsible for specialized environmental legislation and measures, and they provide a yearly summary of status and new proposals in this field in their contribution to the National Budged White Paper. Other ministries are also involved in managing existing climate change related measures and legislation, as well as proposing amendments etc. in their particular

[23] See Meld. St. 13 (2020-2021), available in Norwegian here.
[24] Cf. Innst. 325 S (2020-2021) available in Norwegian here, cf. Stortingstidende nr. 65, April 8, 2020-2021, available in Norwegian here.

field, i.e. the Ministry for Petroleum and Energy. The bigger picture of measured effects in emission reductions as well as on the Norwegian economy, as well as predictions of the future, are provided yearly in the National Budget White Paper and regularly in "The Perspective White Paper".

(58) An overview of Norway's policies and measures is found in Norway's Fourth Biennial Report. Some of the measures specifically aimed at reducing emissions from petroleum and industry processes are also highlighted here:

(59) Norway's largest industry is petroleum production, which covers about 2 percent of the global demand for crude oil and approximately 3 percent of global demand for natural gas. The Norwegian oil and gas industry have for a long time been subject to strong environment and climate policies and measures: Ban on flaring, CO2 tax and contributions to reducing emissions in the EU Emissions Trading System (ETS). In this system, emissions will gradually be reduced and – in accordance with current regulation– approach zero around 2050. The white paper on Norway's Climate Action Plan for 2021–2030 announces a gradual increase in the carbon price for the petroleum sector to NOK 2000 per tonne CO2 equivalents in 2030. In this case, "carbon price" comprises ETS price and CO2 tax. This will progressively increase the cost of emitting CO2 and give stronger incentives to reduce emissions.

(60) Norway spends considerable resources developing new climate friendly technologies to contribute to reducing global emissions. In the autumn of 2020, the previous Norwegian government and Parliament made an investment decision to launch a full-value chain carbon capture and storage project. The project, named "Langskip", is described in the White Paper Meld. St. 33 (2019-2020). It will be the largest industrial climate project to date in Norway, with an estimated public financing of NOK 16.8 billion.

(61) Enova SF is a state enterprise owned by the Norwegian Ministry of Climate and Environment. The purpose of Enova is to contribute to reduced greenhouse gas emissions in the short run (non-ETS emissions) and technology development that also contributes to reduced greenhouse gas emissions in the longer run, and on innovative solutions adapted to a low-emission society. Enova supports investments through financial contributions (grants) amounting to more than NOK 2 billion yearly.

(62) In addition to domestic mitigation measures, Norway also supports emission reduction efforts in other countries. For example, Norway's International Climate and Forest Initiative (NICFI) has since 2008 supported global efforts that reduce greenhouse gas emissions from deforestation and forest degradation in developing countries (REDD+). The funds through Norway's International Climate and Forest Initiative are used to finance verified emission reductions in partner countries, to finance efforts to build up global and national REDD frameworks, to support and create incentives for deforestation free supply chains, build satellite technology to monitor global forests, and to support civil society and indigenous peoples around the world.

3.3.3 Regulation of petroleum activities until production

(63) The Government refers to the Supreme Court §§ 65-70, providing a brief overview of the domestic regulation of petroleum production until the production stage:

> *(65) The regulation of Norwegian petroleum activities may be roughly divided into three phases: the opening of a field, the exploration phase and the production phase. Before each phase, reports and assessments are made in accordance with the rules applicable to the relevant phase. For the opening phase, the main question is whether it is appropriate and desirable to open the area for petroleum activities in the light of an overall balancing of advantages and disadvantages. Before a production licence is awarded, the assessment is primarily related to which blocks should be announced, based on the likelihood of discovery. A block is a defined geographic area. Public consultation rounds are held, involving the Storting at several stages. Before extraction and production, the actual consequences of the extraction are assessed in more detail.*
>
> *(66) Marine areas must be opened for petroleum activities before a production licence can be awarded. The opening procedure is regulated in section 3-1 of the Petroleum Act:*
>
> > *"Prior to the opening of new areas with a view to awarding production licences, an evaluation shall be undertaken of the various interests involved in the relevant area. In this evaluation, an assessment shall be made of the commercial and environmental impact of the petroleum activities and possible risk of pollution, as well as the economic and social effects that petroleum activities may have.*
> >
> > *The question of opening of new areas shall be put before the local public authorities and key interest organisations that may be presumed to be particularly interested in the matter.*
> >
> > *It should be made known through public announcement which parts are planned opened for petroleum activities, and the nature and extent of the activities in question. Interested parties shall be given a time limit of no less than three months to present their views.*
> >
> > *The Ministry is to decide on the administrative procedure to be followed in each individual case."*
>
> *(67) According to the preparatory works, the legislature has assessed these rules against the former Article 110 b subsection 2 of the Constitution, see Proposition to the Odelsting no. 43 (1995–1996) page 33. In section 6 d of the Petroleum Regulations, it is stated that any opening of a new area under section 3-1 of the Petroleum Act must be presented to the Storting.*

(68) During the opening process, the Ministry of Petroleum and Energy is to carry out an impact assessment for the area on the continental shelf that is being considered opened, see chapter 2 a of the Petroleum Regulations. The impact on the environment and the climate is among the factors to be clarified, see section 6 c subsection 1 (b) and (e) of the Regulations. The Storting considers possible opening of an area based on the impact assessment.

(69) A production licence gives the licensee an exclusive right to perform investigations, exploration drilling and extraction of petroleum deposits within the geographical area stated in the licence, but not a right to initiate development and production until further licences are awarded. The licensee becomes the owner of the oil and gas that is produced, see section 3-3 subsection 3 of the Petroleum Act. The procedure for announcing and granting a production licence is provided in section 3-5 of the Petroleum Act and chapter 3 of the Petroleum Regulations. The Regulations contain several requirements for the application on the part of the applicant, but during this phase, the State does not have a statutory obligation to carry out an impact assessment.

(70) If profitable discoveries are made under a production licence, a process is initiated until the actual exploitation of the specific discovery. This process is regulated in chapter 4 of the Petroleum Act and in chapter 4 of the Petroleum Regulations. Among other things, the licensee must apply for and obtain approval of a plan for development and operation (PDO), based on an impact assessment, before development and operation may be initiated, see section 4-2 of the Petroleum Act and sections 22 to 22 c of the Petroleum Regulations. (…).

4 ADMISSIBILITY: THE APPLICANTS DO NOT HAVE *LOCUS STANDI* UNDER ARTICLE 34 OF THE CONVENTION, CF. QUESTION NO. 1

(64) In the first of the Court's questions, the Court asks "Does each of the applicants have locus standi under Article 34 of the Convention with regard to the alleged violations that each of them refers to in the application (Articles 2, 8, 13 in conjunction with 2 and 8 and 14 in conjunction with 2 and 8)?"

4.1 General remarks

(65) According to Article 34, the Court is only entitled to receive applications from persons, non-governmental organizations or groups of individuals "claiming to be the victim of a violation" of the rights contained in the Convention and its Protocols caused by a Contracting State. Article 34 requires that an individual applicant should claim to have been actually affected by the violation he alleges, see, among others, *Klass and Others v. Germany*, no 5029/17, 6 September 1978, § 33.

(66) The question at issue is not merely whether the applicants (the two organizations and the six individual applicants) are currently adversely affected *by climate change* or risk being so in

the future, but whether the applicants are "victims" of a "violation" of their Convention rights within the meaning of Article 34 *on account of* the impugned decision 10 June 2016.

(67) The Court has in exceptional cases accepted that an applicant may be a "potential victim", provided that the applicant is able to produce reasonable and convincing evidence of the likelihood that a violation affecting him/her personally will occur, see, among others, *Renaud Le Mailloux v. France*, no 18108/20 (dec) 5. November 2020 § 11. E.g. referring to the risk of pollution inherent in industrial activities will not in itself be sufficient to enable applicants to claim to be victims of a violation of the Convention, see *Aly Bernard and Others and Greenpeace – Luxembourg v. Luxembourg* (dec.) no 19197/95, 29 June 1999.

(68) In the domestic court proceedings, the applicant organizations' lawsuit was admissible due to a special provision in the Norwegian Dispute Act allowing organizations to "bring an action in its own name in relation to matters that fall within its purpose and normal scope", cf. § 1-4 of the Act.[25] The organizations did not include any individuals as plaintiffs, and their submissions to the domestic courts were based on submissions made on behalf of the population as a whole. Accordingly, the domestic courts applied the Convention in relation to the population as a whole, and not specific individuals. This is explicitly stated in the High Court's judgment.[26]

(69) In the Government's view, the submissions by the applicants do not establish the required nexus between the impugned acts/omissions and alleged (risks of) adverse effects on the personal lives of the individual applicants, nor for the organizations to be victims themselves. Accordingly, the Government holds that *none* of the applicants have locus standi under Article 34.

(70) The application effectually constitutes an *actio popularis*; an *in abstracto* complaint made in the collective interest. This sort of complaint is not recognized within the Convention system, see, among others, *Cordella and Others v. Italy,* no. 54414/13 and 54264/15, 24 January 2019 § 100. This means that an applicant cannot file a complaint about a provision of domestic law, a national practice or a public act merely because they consider it to be in violation of the Convention, see *Le Mailloux v. France,* 5 November 2020, § 11.

(71) The fact that domestic courts allowed the *actio popularis* challenge based on the special provision in the Dispute Act section 1-4, does not in itself provide the Court with jurisdiction pursuant to the Convention, see also the Supreme Court judgment § 165 [excerpt]:

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[25] Section 1-4 also requires that the general conditions of section 1-3 of the Act are otherwise satisfied.
[26] Note however that the Government's submissions before the High Court were not correctly rendered in the High Court's judgment. The Government did not submit that the 'victim' requirement in Article 34 of the Convention should be applied by domestic courts. The Government argued that the organisations could not – through the Civil Procedures Act section 1-4 – be freed from the obligation to substantiate a link between the impugned licences and impacts on (specified) individuals protected by the Convention. The Government did not submit this as grounds for "inadmissibility" ("avvisning"), but rather "no violation" ("frifinnelse").

Although the groups may not have a right to submit an application to the European Court of Human Rights for violation of Articles 2 and 8, the groups may assert violations of the ECHR in Norwegian courts under section 1-4 of the Dispute Act.

(72) In the following, the Government will expand its views regarding the organizations (section 4.2) and regarding the individual applicants (section 4.3).

4.2 The organizations are not "victims" within the meaning of Article 34

(73) During the domestic proceedings, the two organizations argued in general terms with reference to the general policy issues and how the population in Norway might generally be affected by climate change in the future. The essence of the argument was that the impugned licences contributed to increasing the general risks associated with climate change. The organizations did not single out specific individuals, and there was no particular emphasis on the effects described by the individual applicants before the Court and no mention of effects on the Sámi population. Norwegian courts assessed the Convention on this general background.

(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 persons, which does not extend to organizations, and neither do the aspects of Article 8 regarding the similar features of home and family life.[27]

(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

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[27] See also similarly, the Irish Supreme Court in the case of Friends of the Irish Environment CLG v. The Government of Ireland, 31 July 2020 [app. no. 205/19] where the organization "Friends of the Irish Environment" was not granted standing, cf. section 7.24 (see also 7.22 and 9.4): *"Having concluded that FIE would not have standing to maintain a claim based on the right to life or the right to bodily integrity of others under the Irish Constitution, it seems to me to follow that FIE likewise does not have standing to maintain a claim based on the provisions of the 2003 Act where reliance is being placed on the analogous Art. 2 and Art. 8 rights. I would, therefore, conclude that FIE does not have standing to maintain any of the rights based claims put forward in these proceedings."*

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.

(78) With regard to the "interests of future generations", the Government underlines that neither the Convention text nor the case law of the Court provides any basis for recognizing future generations as "victims" within the context of Article 34. The case law of the Court in environmental matters essentially about *protecting individuals* from suffering a disproportionate burden caused by economic activities benefiting society at large, as well as protecting individuals especially vulnerable to natural disasters through adaptive measures. This protection of individuals does not extend to generations in general and future generations in particular. The Government disagrees with the applicants in that the Court's concrete reasoning in *Jugheli v. Georgia*, no 38342/95, 13 July 2017 may be of relevance to the situation of the applicants in this case.[28]

(79) Moreover, other climate cases in Europe show that it is a viable alternative for individuals to join alongside organizations in bringing this sort of claim, see section 5 below regarding exhaustion of domestic remedies.

(80) Finally, the organizations claim in their "additional submissions" § 41 that they themselves have been *directly affected* by what they refer as the "omission of Respondent to conduct an impact assessment of the full climate effects". The Government fails to see how the applicant organizations could be considered directly affected in this regard, and respectfully submits that there are no grounds for admissibility pursuant to Article 34 on this basis either.

4.3 The individual applicants are not "victims" within the meaning of Article 34

(81) Before the Court, the six individual applicants have submitted statements regarding the impact of the climate crisis on their lives in general, see annexes 1-6 of the application. In the "additional submission" para. 6, it is submitted that all the individual applicants "experience climate anxiety, emotional distress and worry greatly about the current and

[28] See the applicants' additional submissions § 60-61.

imminent risks of serious climate effects in Norway, and how this will impact their lives, life choices, and the lives of future generations". Their statements regard their views on the present and potential effect of the climate crisis in general, and to a limited degree the effect of the 23rd licensing round.

(82) The primary purpose of the action taken by the individual applications in their application to the Court appear to be the same as that of the organizations: defending what is perceived as the collective interest of the population as a whole. The applicants refer to the general seriousness of climate change in general and share their concern as to how it will affect the global and Norwegian society as a whole. They are concerned for their futures as part of society as a whole and for future generations. With the exception of the two (or three) applicants who are part of the Sámi population,[29] the applicants do not refer to any concrete physical harm suffered because of the impugned licences. Their claim regards the risks associated with climate change in general, and their disaffection with the approach chosen by Norwegian authorities towards the climate change issue.

(83) These are hallmarks of an *actio popularis*. The same goes for the individual applicants' claim that they were directly affected by the alleged insufficient impact assessment, as their participation in the consultation evidently would be as representatives of general, and not individual, interests.

(84) The heart of the argument made by the individual applicants is that they are very concerned about global climate change, they know that fossil fuels contribute to climate change, and consequently all public decisions that could end up allowing fossil fuel production contribute to their worry. However, a general concern for the general consequences of climate change on society does not qualify as being "affected" within the meaning of Article 34. Another interpretation of Article 34, indeed the Convention as a whole, would make the 'victim test' completely subjective. If the Court were to follow this approach, it would effectively accept the notion that all emissions-related decisions presently constitute an interference with the Convention rights of virtually everyone within the State's jurisdiction.

(85) The Government reiterates that all of the production licences awarded in the 23rd licensing have been relinquished by the respective licencees, meaning that there will not be any emissions from future petroleum activities or combustion of petroleum as a result of the impugned decision. The applicants have highlighted the effects their concern for climate change in general and in the future have on their lives, but not pointed towards acts or omissions associated with the impugned decisions by the Government that directly affect that persons Convention rights and freedoms.

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[29] In the additional submission para. 67, it is stated that "[A]pplicants 4-6 are members of the indigenous Sámi community…". However, there seems to be no mention of any connection to the Sámi community in the individual statement of applicant 5.

4.4 Conclusion

(86) The Government holds that the applicants, both the two organizations and the six individual applicants do not have *locus standi* under Article 34 of the Convention.

5 ADMISSIBILITY: THE INDIVIDUAL APPLICANTS HAVE NOT EXHAUSTED ALL DOMESTIC REMEDIES WITHIN THE MEANING OF ARTICLE 35

(87) Pursuant to Article 35 § 1 of the Convention, the Court "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of four months from the date on which the final decision was taken", cf. the Court's question no 2.

(88) In the present case, none of the six individual applicants have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention. It is not disputed that the individual applicants were not formally part of the domestic proceedings.

(89) In some special circumstances, individuals have been exonerated from bringing their own domestic proceedings in cases where an NGO in accordance with domestic law has been explicitly set up for the specific purpose of defending its members interests before the courts, and where the members are directly affected by the impugned decision/omission in question, see *Gorraiz Lizarraga and others* v. *Spain,* no 62543/00, 27 April 2004 § 39. In the Government's view, the Court's reasoning in these special cases does not apply in the present case. In the present case, the organizations domestically brought an a*ctio popularis* regarding the general interests of the population as a whole pursuant to section 1-4 of the Dispute Act.

(90) Furthermore, although it may be argued that the subject matter of the domestic public interest case is closely related to the individual applicants' grievances before the Court, the subject matter clearly does not correspond exactly to the applicants' individual situations, see *Amanda Kósa v. Hungary* (dec.), no 53461/15, 14 December 2017 §§ 56, 59 and 63.

(91) Notably, in the domestic court proceedings, only Articles 2 and 8 were explicitly invoked by the applicant organizations, in addition to the main focus on Article 112 of the Norwegian Constitution regarding the right of every person to a healthy, productive and diverse environment. Before the Court, the individual applicants (not party to the domestic proceedings) seek to uphold their individual rights, and they also invoke other Articles (such as Articles 13 and 14). These are in principle complaints of a different character. In the Government's view, the organizations did not 'in essence' argue before the domestic courts that young people were subjected to *discrimination based on age*. Although the organizations did emphasize that young people would bear the burden of the effects of climate change, this is not tantamount to a treatment entailing discrimination.

(92) As regards the claim of a violation based on *discrimination of the Sámi minority*, this was not invoked before the domestic courts.

(93) The Court has previously and consistently held that it is "a fundamental feature" of the machinery of protection established by the Convention that it is "subsidiary to the national systems safeguarding human rights", cf. *Vuckovic and others v. Serbia* [GC], no. 17153/11, 25 March 2014, §§ 69-70; *Selmouni v. France* [GC], no. 25803/94, 28. July 1999, § 74; and *Demopoulos and others v. Turkey* [GC], nos. 46113/99 (dec.) 1 March 2010, § 69. The principle of subsidiarity is closely linked to the requirement to exhaust domestic remedies. Reference is also made to Article 1 of Protocol 15 amending the Convention, which entered into force on 1 August 2021.

(94) Neither the rules of litigation in Norway nor the facts of the present application place an excessive burden on litigants that may justify an exemption from Article 35 § 1 of the Convention. The lack of exhaustion of domestic remedies on part of the individual applicants have denied the domestic courts in Norway the opportunity to examine the case, and if necessary, remedy the alleged violations, pursuant to the applicants' grievances under the relevant Articles of the Convention, see also *Demopoulos and others v. Turkey* [GC] § 69.

(95) It follows that the application from the six individual applicants is inadmissible, as they have not lodged any complaints before domestic courts, and the case reveals no special circumstances that would absolve the applicants from this requirement, cf. Article 35 § 1 of the Convention.

6 THE GOVERNMENT'S SUBMISSIONS TO THE COURT'S QUESTIONS NO. 3 (A)-(D)

6.1 Question no. 3 (a) and (b)

(96) The Government refers to the Court's question no 3 a and b:

> *In the light of the domestic proceedings' having concerned judicial review of the decision of 10 June 2016 to issue ten petroleum production licenses under section 3-3 of the Petroleum Act:*
>
> *(a) Observing the reasons provided by the Supreme Court in paragraphs 148 and 161-162 of its judgment: to what degree do the applicants' arguments, in so far as they might be perceived to concern environmental consequences of the respondent State's petroleum activities in a more general manner and its policies in that regard, fall within the scope of the case before the Court?*
>
> *(b) Could the applicants have brought their Convention grievances in respect of the respondent State, in so far as they might be perceived to rely on such arguments as mentioned in (a) above, before the domestic courts in any other manner?*

(97) Before the domestic courts, the organizations chose to challenge the validity of the impugned decision, namely the decision to award ten petroleum production licences. As the Supreme Court states, the consequence of this choice was that the challenged decision ("tvistegjenstanden") dictated the subject matter and the competence of the domestic courts

in adjudicating the case, see §§ 148, cf. 161-162. In § 148, the Supreme Court inter alia states the following:

> *In my view, a validity challenge must take the specific decision as its starting point. On the other hand, the decision cannot be considered in isolation, but as a part of a whole. Yet, it cannot be so that when contesting individual measures, one may challenge the environment, climate or petroleum policy as a whole.*

(98) In other words, the challenge to the validity of the impugned public administrative measure would have to be assessed taking into account the cumulative nature of impacts, but the choice to challenge a concrete administrative measure also limited the subject matter of the case before the domestic courts accordingly.

(99) This means that the case before the domestic courts centered on the impugned petroleum licences and not Norwegian climate and energy policy in general, and the case before the Court must be limited accordingly, cf. Article 35 § 1 of the Convention. Reference is also made to the preamble to the Convention, whereby the High Contracting Parties "in accordance with the principle of subsidiarity" have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols, and that in doing so they "enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights".

(100) The Court in question 3 b) asks if the applicants could have brought their Convention grievances before the domestic courts in any other manner, in so far as they might be perceived to rely on arguments concerning environmental consequences of Norway's petroleum activities in a more general manner and its policies in that regard.

(101) At the outset, the Government notes that this question is hypothetical. According to the Norwegian procedural framework in general, the right to bring "Convention grievances" before domestic courts depend on an assessment of the general requirements to file a claim, as well as a concrete assessment of the claim filed. Pursuant to the Dispute Act section 1-3, an action "may be brought before the courts for legal claims". The claimant must demonstrate "a genuine need to have the claim decided against the defendant". This shall be determined "based on an overall assessment of the relevance of the claim and the parties' connection to the claim". If the conditions in section 1-3 are satisfied, an organization or foundation may bring an action in its own name in relation to matters that fall within its purpose and normal scope", cf. the Dispute Act section 1-4. For instance, in HR-2021-417-P (Acer), the majority of the Supreme Court sitting as a plenary court found that the organization "No to the EU" could bring an action against the State arguing that the Storting did not act in accordance with the Constitution when it consented to the incorporation of the EU's third energy market package into the EEA Agreement with a general majority.

(102) Insofar as the applicants' "Convention grievances" rely on arguments concerning environmental consequences of Norway's petroleum activities and policies in a more general manner, the procedural framework in Norway provides alternative avenues, subject to the

requirements of the Dispute Act sections 1-3 and 1-4. The applicants could *inter alia* have filed for a declaratory judgment holding that their rights pursuant to the relevant Articles of the Convention had been violated. The right to file for declaratory judgments for human rights violations in general is not unconditional, see the preparatory works (Ot.prp. nr. 51 (2004-2005)) section 11.8.4. However, depending on the circumstances of the case and the "Convention grievances", this could provide an "adequate and effective remedy for violations", cf. for instance app. nos. 62363/16 and 62803/16 *I.F.* and *I.F.F. v. Norway* (dec.).

6.2 Question no. 3 (c)

(103) The Government refers to the Court's question no. 3 (c):

> *Observing the reasons provided by the Supreme Court in paragraphs 167 et seq of its judgment: what is the link between the concrete decision of 10 June 2016 and the matters which the applicants argue entail violations of their rights under the Convention?*[30]

(104) The Supreme Court in paragraph 167 et seq. found that there was not an "adequate link" between the impugned decision (production licences in the 23rd licensing round) that would lead to a "real and immediate" risk of loss of human lives, in violation of Article 2 of the Convention, nor was there an adequate link between the decision and the risk of an interference on private and family life, in violation of Article 8. The Supreme Court concluded that the alleged link between the impugned decision, climate change and the potential future effects of climate change on the applicants was derived and uncertain. The Government shares this view and refers to the Supreme Court's assessment. The application concerns the future consequences confronting all of society on account of accumulated, global effects of modern societies in general. The Government submits that there is neither any 'direct' link nor is there an adequately 'close' link between the impugned decision of 10 June 2016 and the applicants' apprehensions regarding any of the Convention's provisions.

(105) In any event, the main driver behind greenhouse gas emissions at present is the global energy demand (population growth, economic development, etc.) This energy demand must be met through an unprecedentedly fast transition to renewable energy sources and the phasing out of fossil fuels combined with *inter alia* carbon capture and storage (CCS). The specter of potential measures to accelerate the transition is wide (quotas, taxes, subsidies etc.), involving concerted, international efforts as well as domestic measures. In this global context, the impugned decision could only have had a limited effect. And as all of the production licences awarded in the impugned decision have been relinquished by the

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[30] The version of the Supreme Court's judgment provided by the applicants does not adequately translate paragraph 167 of the judgment. According to the unofficial translation provided by the applicants, it is stated in para. 167 that *"the consequences of climate changes in Norway will undoubtedly lead to loss of human life"*, whereas the official translation has the following wording: "*the consequences of climate change in Norway may lead to loss of human lives"*.

licencees, there will not be any emissions from future petroleum activities or combustion of petroleum as a result of the impugned decision.

6.3 Question no. 3 (d)

(106) The Government refers to the Court's question no. 3 (d):

> *Inter alia, observing the reasons provided by the Supreme Court's minority in paragraphs 272 et seq of its judgment, and assuming that the purpose of issuing production licences is ultimately the subsequent extraction of oil and gas: to what degree – factually and legally – may the applicant organisations' arguments concerning the environmental consequences of any specific petroleum production and extraction in continuation of the licences granted in the decision reviewed by the domestic courts realistically be taken into account at any later stages of the administrative process relating to production (such as in connection with approval of plans for development and operation/exploitation of petroleum deposits under section 4-2 of the Petroleum Act)? Will the scope, depth, quality and efficiency of any such subsequent assessment be such as to render unnecessary under the Convention an assessment, prior to the granting of the licences, of the environmental consequences of future extraction of oil and gas?*

(107) Although it could be said that the "purpose" of issuing production licences is ultimately the subsequent extraction of oil and gas, it cannot be conferred that the issuing of a production licence in any event, unconditionally and for the unforeseeable future will lead to extraction of oil and gas. The Government refers to section 3.3.3 above, providing an overview of the different legal requirements applicable at the different stages of petroleum activity, and the assessments to be made at these stages.

(108) Occasioned by the applicant organizations legal claims, the Supreme Court (majority) considered whether it had been a procedural error pursuant to domestic law that the opening report did not assess the possible emissions resulting from combustion of petroleum produced in this area in the future (see § 209).

(109) A majority of 11 justices held that no procedural error had occurred, reasoning that it was sufficient at the opening stage that future emissions from combustion of petroleum had been addressed generally, at an overarching level, see § 238:

> *As demonstrated, global effects of combustion were thoroughly assessed at the opening of the southeast Barents Sea and repeated several times during the years that followed and until today. The climate report, which is based on the reports from the IPCC that thoroughly account for climate change due to global greenhouse gas emissions and the necessity of cuts, was an important factor in the assessments. I cannot see that the fact that the assessments were more general and not based on specific – but highly uncertain – calculations of global greenhouse gas emissions from an imagined petroleum export from the area – provided a poorer basis for decision-making – rather on the contrary.*

(110) The majority considered that downstream (combustion) emissions (abroad) would more appropriately be addressed at the later stage of approving plans for actual production of oil or gas. In other words, the majority argued that a specific analysis of anticipated climate effects of combustion abroad of exported petroleum would be more sensible to undertake at the stage where the level of certainty was greater. The majority based its view on section 112 of the Constitution, emphasizing the connection between the procedural aspect in section 112(2) and the substantive aspects in (1) and (3) of the same provision (see §§ 182-183).

(111) Furthermore, the majority considered that both the requirements transpiring from section 112(2) and the EU's directives on environmental impact assessments has been implemented in Norwegian legislation through the Petroleum Act and Regulation (see §§ 185-192).

(112) The majority of the Supreme Court stated that the potential global climate effects would be most sensibly assessed at the extraction stage, and that no procedural errors were made in connection with the opening of the southeast Barents Sea in 2013, cf. § 241:

> *My conclusion is that no procedural errors were made relating to the climate effects under the impact assessment for the opening of the southeast Barents Sea in 2013. The climate effects are politically assessed on a regular basis – and the consequences will be clarified with a possible PDO application. Hence, this cannot have the effect that the decision to award production licences in the 23rd licensing rounds in 2016 is invalid on this basis.*

(113) Furthermore, as neither the opening in 2013 nor the impugned decision in 2016 had actually led to any greenhouse gas emissions from the extraction of petroleum, any failure to assess global effects of future potential combustion before the opening in 2013 or the 23rd licensing round could in any case be remedied through an assessment at a later stage – at the extraction stage and/or politically through a decision to downscale petroleum activites, cf. § 246:

> *I mention all the same that in the case at hand, neither the opening in 2013 nor the awarding of licences in 2016 has led to greenhouse gas emissions. The authorities will thus be able through the further process to remedy a failure to assess the combustion effect abroad of future petroleum recovery in the southeast Barents Sea before the opening in 2013. As mentioned, this will primarily take place at the PDO stage through the environmental assessment forming the basis for the authorities' decision whether to award licences for development and operation, on what conditions. However, it may also take place through a general political decision to downscale the petroleum activities if the Storting deems it appropriate. This must clearly be sufficient under the requirements laid down by the European Court of Justice. The basic intent behind the rules is to ensure that the environmental effects are adequately clarified and assessed before possible implementation. This is reflected in the assessment regime applicable in this area, as a PDO cannot be approved until after an environmental assessment. In other words, the authorities are in full control of whether or not the environmental effect will occur.*

(114) The minority of the Supreme Court would have considered it sufficient at the opening stage, pursuant to the SEA directive, to do an overall consideration of the climate effect from potential combustion of petroleum, see §§ 270-274. As the Court's question regarding the "scope, depth, quality and efficiency" takes the minority's reasoning as its starting point, it should be noted that the minority view merely would require such a limited assessment at the time of the opening.

(115) Following the Supreme Court judgment, the Government has clarified that potential emissions occurring from combustion of petroleum extracted and exported from Norway henceforth will be considered when deciding upon applications for development and operation of new petroleum fields (so called "PDOs"). As part of this clarification, it was established that these assessments will, as of 1 April 2022, be communicated in the decisions regarding the PDOs made by the Ministry of Petroleum and Energy.

(116) Accordingly, potential emissions from combustion of petroleum extracted and exported will be addressed when considering an application for the approval of PDO of a new field, thus before any actual environmental impacts of the extraction and/or exportation occurs. The authorities' right and duty under Article 112 § 2 to reject an application based on climate change considerations or attach very strict conditions to an approval, will be taken into account at this stage, cf. the Supreme Court judgment §§ 218-223.

(117) Occasioned by the Court's question if the environmental consequences of petroleum production and extraction in continuation of the licences granted "realistically" will be taken into account at a later stage, the Supreme Court's majority's reasoning in §§ 222-223 should be noted:

> *(222) I agree with the Court of Appeal that section 4-2 of the Petroleum Act in any case must be interpreted in the light of Article 112 of the Constitution. If the situation at the extraction stage has become such that allowing the extraction would be incompatible with Article 112, the authorities will have both a right and a duty not to approve the project.*
>
> *(223) In other words, the situation is that, at the opening of the southeast Barents Sea it was highly uncertain whether petroleum would be found, or how much. Neither the opening nor the exploration will have significant global environmental effects. And the authorities will have a right and an obligation to disprove the PDO if the general consideration for the climate and environment at the time so indicates. I find that this, considered in aggregate, must be essential for the establishment of the requirements for calculation of global greenhouse gas emissions due to possible recovery and export of petroleum 17 years ahead.*

(118) The assessment by the Supreme Court is linked to the obligations pursuant to the Norwegian Constitution section 112, but regards consideration of the environmental effect of petroleum activity. Thus, in the Government's view, the applicant organizations' arguments may indeed be "realistically taken into account" at the stage of the administrative process relating to production, cf. the first part of the Court's question.

(119) Second, the Court asks whether the "scope, depth, quality and efficiency" of such an assessment at later stages than at the opening phase, will make it "unnecessary under the Convention" to undertake an assessment *prior* to the granting of the licences. In the present case, the Government holds that it did not constitute a violation of the Convention Articles 2, 8, 13 or 14 not to assess the climate effects prior to the opening of the area for petroleum activities, as concluded unanimously by the Supreme Court. The Government also refers to sections 7-9 below.

7 ASSESSMENT ON THE MERITS – NO VIOLATION OF THE CONVENTION, CF. THE COURT'S QUESTION NO. 4

7.1 Article 8 of the Convention – applicability

7.1.1 General observations regarding applicability of the Convention's provisions

(120) As the Court will recall, no right to environmental preservation is included as such among the rights and freedoms guaranteed by the Convention or its Protocols, see *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; *Fadeyeva* § 68; and *Atanasov v. Bulgaria*, no. 12853/03, 2 December 2010, § 66.

(121) The absence in the Convention of a right to environmental preservation, or any form of right to an environment of a particular quality as such, has been noted several times by the Council of Europe's Parliamentary Assembly, urging the Committee of Ministers to consider the possibility of supplementing the Convention with a protocol in that respect. Reference is made to the summary provided in *Atanasov,* see §§ 56 and 57. The Committee of Ministers has not followed through on the idea of an additional protocol so far, and this represents a common State practice which must inform the interpretation of the Convention in the present case. State practice on this matter has recently been further reinforced by the establishment, under the auspices of the Committee of Ministers, of a Drafting Group on Human Rights and Environment (CDDH-ENV) with the mandate to elaborate a draft non-binding legal instrument to be transmitted to the Committee of Ministers of the Council of Europe by the end of June 2022.

Annex 4: Parliamentary Assembly Recommendation 2211 (2021)

(122) The Committee of Ministers has also invited the Steering Committee for Human Rights (CDDH), "in the context of its ongoing work on human rights and the environment to consider the need for and feasibility of a further instrument or instruments, bearing in mind Recommendation 2211 (2021)". To the Government's knowledge, the Drafting Group on Human Rights and Environment (CDDH-ENV) will initiate its work this autumn. This ongoing work further underlines the absence in the Convention of a right to a healthy environment as such.

Annex 5: Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-ENV during the 2022-

2025 biennium and relevant extracts of the 95th CDDH meeting report (23-26 November 2021)

(123) As recognized by the Supreme Court in § 169, it transpires from the case law of the Court that Article 8 entails positive obligations,[31] and that under certain circumstances this could entail a duty to protect the environment,[32] referencing the Court's case law concerning local environmental pollution. The Court has adjudicated a substantial number of cases concerning environmental issues, taking the view that environmental issues may interfere with individual rights. According to this case law, for the Convention's provisions to be applicable, the environmental harm or risk complained of must reach a certain threshold of severity and be sufficiently closely connected with the rights enshrined in the Convention.

(124) An issue may arise under Article 8 of the Convention where an individual is *"directly and seriously affected"* by noise or other pollution, see *Hatton* § 96; *Greenpeace E.V* (dec.); and *Jugheli*, § 62, also phrased as a requirement of a *"direct and immediate link"* between the impugned hazardous activity and the effects on the applicant's home or private or family life, see *Atanasov*, § 66. The establishment of a *"sufficiently close link"* is also necessary where the applicants complain that the impugned activity subjects them to an unacceptable degree of *risk* of harm. In the Court's case law, such a link has been established prior to the Court's assessments as part of an environmental impact assessment procedure (see *Taşkın* § 113; and *Hardy and Maile* §§ 189-192), otherwise defined by internal measures (see, *Cordella* §§ 103–106) or has otherwise been evident based on the particular circumstances of the case (see *Tătar* §§ 86 and 93–97).

(125) The Court's case law illustrates the range of contexts in which Article 8 may be applicable. Pollution must attain a minimum level of severity if the complaints are to fall within the scope of Article 8, see *López Ostra*, § 51; *Atanasov* § 75; and *Fadeyeva*, §§ 69-70. There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city, see *Hardy and Maile* § 188. Moreover, Article 8 appears relevant exclusively in circumstances where individuals suffer the direct effects of hazardous activities located in the *immediate geographical vicinity* of the applicants' homes or where the applicants are otherwise *directly exposed* to the particles/waste stemming from the hazardous activity (such as local waste management or exposure to asbestos in the workplace). The Government refers to the summary of the Court's case law per December 2010 in *Atanasov* §§ 67–75, which is also referenced in the Supreme Court's judgment in § 170. The same general principles and characteristics transpire from the Court's subsequent case law. See, for example, *Jugheli*, which concerned the risks posed to the applicants by a thermal power plant located approximately 4 metres from the residential building where the applicants lived (see §§ 7 and 50). Reference is also made to the case of *Cordella*, which concerned a broader geographical area subject to air pollution from a steel plant, but where the Court still made a

[31] See § 169.

[32] See § 169: "In certain cases, this may have the result that the State has a duty to protect the environment".

distinction as to applicability of the Convention based on the recognition in public reports and medical documents confirming environmental exposure to inhalable carcinogenic substances produced by the Ilva Steel Plant and the associated medical conditions in individuals living in surrounding areas, see §§ 99, and 103–108.

(126) Turning to the present case, the Supreme Court unanimously found that the potential effects of possible future emissions due to licences awarded in the impugned decision, would not fall within the scope of Article 8, see § 171. In other words, based on the facts of the case and in light of plaintiffs' general actio popularis submissions, no direct and immediate (or sufficiently close) link could be established between the impugned decision and an alleged risk of an unacceptable degree of harm (see also the Supreme Court's reasoning in § 168 regarding Article 2). The Government shares this view.

(127) Moreover, the Government further underlines that the applicants have not established that they are (at risk of being) 'seriously' affected by the impugned decision. While recognising the gravity of future climatic changes caused by the emissions from combustion of fossil fuels, the Government observes that the circumstances pertaining to the applicants in the present case clearly do not reach the threshold established in the Court's case law. The circumstances presented in the application is not parallel to the Court's case law concerning individual risk, in which the risk to health or home has stemmed directly from the polluting activity in question or the individual has been directly exposed to hazardous substances or other sources of risk at the workplace. The present case concerns the applicants' apprehension for the future consequences confronting all of society on account of accumulated, global effects of modern societies.

7.1.2 Regarding the 'common ground' doctrine

(128) In the domestic court proceedings, the applicant organizations referenced the 'common ground' doctrine, with reference to the Court's Grand Chamber judgment no. 34503/9712 12 November 2008 *Demir and Baykara v. Turkey*, §§ 85–86 regarding fundamental rights of workers to engage in collective bargaining. In the Government's view, there is no equivalent common ground doctrine applicable in support of the applicants' submissions regarding the interpretation of the provisions of the Convention in the present case.

(129) In the view of the Government, the applicants propose a dynamic interpretation of the Convention's provisions for which there is no basis in neither the Convention nor relevant sources of law. While the Convention, with the exception of Article 1, is a 'living instrument', the rationale behind this doctrine is not to develop new norms, but to ensure that the Convention reflects the increasingly high standard required in the area of the protection of human rights, see *Demir and Baykara* [GC], no. 34503/9712, 12 November 2008, § 146. The Convention should, as far as possible, be interpreted in harmony with other rules of international law, see *Magyar Helsinki Bisottzag v. Hungary* [GC] no. 18030/11, 8 November 2016, § 123; and the Vienna Convention Article 31 (3) c. The consensus emerging from specialized international instruments and from the practice of Contracting States may therefore constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases, see *Magyar Helsinki Bisottzag*, § 124.

(130) Thus, the Government shares the view of the Supreme Court regarding the 'common ground' doctrine referenced by the applicant organizations. Noting that the Convention does not have a separate environmental provision, the Supreme Court stated that *such a doctrine*[33] – "such" being a reference to the reasoning in *Demir and Baykara* – could probably not be applicable *in the same manner* in the present case.[34] It must also be emphasized that the Supreme Court considered that it had not in any case been demonstrated that the impugned decision violated Norway's international obligations.[35]

(131) Furthermore, the Government observes that there is no support for the applicants' dynamic interpretation of the Convention in the normative approach to global climate change adopted by the Contracting States. The *normative common ground* existing between Convention states, expressed through the international climate change framework, the EU's climate change legislation, and domestic climate change acts, militates against this sort of interpretation of the Convention. To the extent that the Paris Agreement is relevant to the interpretation or application of the Convention, it will not suffice to look at the collective long-term temperature target in isolation. Rather, the long-term temperature target must be understood within the larger context of the normative framework adopted by the Parties to the Agreement to reach this aim. The Government recalls that neither the UNFCCC nor the Paris Agreement contain individual rights nor a complaint mechanism. Instead, the framework is built on the notion of obligations on states without corresponding individual rights. Moreover, as the Supreme Court judgment demonstrates, domestic approaches to constitutional 'environmental rights' vary.

(132) In section 3.2 of the applicants' additional submissions, it is inter alia claimed that the precautionary principle represents a legal standard in cases concerning environmental harm, cf. § 52, with reference to *Tatar v. Romania,* covering a full range of preventive measures, cf. § 46. *The precautionary principle* is reflected in the text of several binding and non-binding international instruments. The Government does not recognize that the precautionary principle enjoys the status of customary international law. A precautionary approach may nonetheless be relevant when interpreting international treaties, in line with the ruling by the International Court of Justice in the *Pulp Mills on the River Uruguay*, § 164. Within the context of the Convention, the Government observes that the Court in *Tatar v. Romania*, no. 67021/01, judgment 27 January 2009, made references to the precautionary principle in its assessment of the merits of the complaint, stating that the principle "recommends" that States should not delay the adoption of effective and proportionate measures to prevent a risk of serious and irreversible damage to the environment in the absence of scientific or technical certainty (§ 109 of the judgment). The Court also recalled – in relation to the

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[33] The wording in § 174 of the judgment reads "ei slik lære", which in the Government's view should be read as "such a doctrine" or "this kind of doctrine". In the official translation enclosed in appendix 1, the passage is translated into "such a principle".
[34] Ctr. the additional submission § 26 by the applicants, where the Court's reasoning is not presented in full.
[35] See § 174 last sentence: "In any case, it has not been demonstrated that the production licences constitute a breach of our international obligations."

authorities' (lack of) follow-up of an environmental accident involving the release of 100 000 m^3 of water contaminated with sodium cyanide into the environment – the "importance of the precautionary principle (enshrined for the first time in the Rio Declaration), which 'is intended to be applied with a view to ensuring a high level of protection of health, consumer safety and the environment in all community activities'".[36]

(133) The applicants also refer to a requirement to "safeguard intergenerational rights" as a common ground principle. The Government holds that this is not customary law nor a 'general principle of law' within the context of Article 38 (1) c of the Statute of the International Court of Justice.

7.1.3 The Urgenda judgment and other European cases mentioned by the applicants

(134) The applicants make several references to the Dutch *Urgenda* judgment, as was also the case before the Supreme Court. In the view of the Supreme Court, the *Urgenda* judgment was of little relevance to the present case due to the essentially different subject matter of that case, cf. § 173. First the issue in the *Urgenda* case was whether the Dutch government was at liberty to lower the general domestic emission targets that it had already set, it did not concern banning a specific measure or possible future emissions, and it did not concern the validity of an administrative decision. The Government adds that there are several additional, significant differences that further distinguishes the cases and limiting the relevance of comparisons, notably:

i. the Convention was not used directly, but as a means to determine the threshold of conduct expected by the Dutch Civil Code;
ii. the case concerned emissions from Dutch territory only, in line with the attribution of emissions agreed in all climate change agreements;
iii. the case concerned general emission targets, not specific climate change measures/measures with climate change consequences;
iv. Dutch authorities had departed from a stricter emission target without providing a satisfactory explanation;
v. it would be for the executive and legislative branch to decide on how the emission target should be reached (i.e. the courts would not dictate which sectors or measures should provide for emission reductions).

(135) The applicants also reference several other European court cases. In the Government's view, no unison interpretation may be derived from these cases that is in line with the interpretation proposed by the applicants.

7.1.4 Conclusion

(136) In conclusion, the Government holds that Article 8 is not applicable. No sufficiently close causal link is probable between, on the one hand, the impugned decision and, on the other

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[36] See § 120 – translated from French.

hand, adverse effects on the applicants above the threshold recognized in the Court's case law. Nor is any such "sufficiently close link" between the impugned decision and a risk of such adverse effects probable. It follows that the application should be declared inadmissible.

7.2 Article 8 – no grounds for violation if applicable

7.2.1 Challenges concerning the application of the Court's general principles

(137) Should the Court hold that Article 8 is applicable in the present case, the Government first invites the Court to appreciate the challenges arising in the application of the general principles transpiring from its established case law, considering that those principles have been developed in the context of local environmental degradation with narrowly defined causes and direct effects on the lives of individuals. It is not clear how these general principles could to be translated into a context such as the present – where the problem is of a global character, the present case concerns the consideration of one administrative decision to award new production licences, and through it, the necessity of one type of climate change measures, and where the applicants refer to possible generic effects on their lives in the future – without instilling in the Court the competence of conducting abstract review of the Contracting States beyond anything imagined at the adoption of the Convention.

(138) The interpretation sought by the applicants would require that the Court alter the character of the positive obligations under the Convention developed for the protection of *individual* human rights into general positive obligations to ensure present and future society-wide, collective interests. Such an interpretation lacks support in the Convention text, its drafting history and the Court's case law. The Government observes that the Court has consistently held that whether a case is analyzed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. *The ultimate question* before the Court is in both contexts whether a State has succeeded in striking a fair balance between *the competing interests of the individuals affected and the community/society as a whole*, see, among others, *Hatton* §§ 122, 125, 127 and 129; *Greenpeace E.V.;* and *Cordella* § 158.

(139) Essentially, the Court has established Article 8 as a safeguard so that individuals in the vicinity of (or individuals conducting) a hazardous activity do not have to bear excessive burdens on account of an industrial or other activity which benefits the broader society, see for instance *Cordella,* §§ 158, 161 and 174. The role of the Court is to review whether the impugned situation is one in which certain individuals bear a heavy burden on behalf of the rest of the community and, if so, whether this is justified, see *Fadeyeva* § 128; *Grimkovskaya v. Ukraine*, no. 38182/03, 21 July 2011, § 63; and *Dubetska* § 142 and § 155. See also *Jugheli*, §§ 76–78.

(140) The context of climate change is, however, fundamentally different. The problem of global warming is one in which both the causes and effects are produced and borne by the whole of society – and on a global scale. Thus, the question of when and how to cut domestic greenhouse gas emissions is not a question of safeguarding the rights of specific individuals against unjustified burdens placed on their personal lives by the wider society pursuing an economic interest, but rather of balancing broader societal interests against each other. In this society-wide balancing exercise, there is no apparent role for the Court based on the Convention and the Court's case law.

(141) Further, the reasons underlying the Contracting States' wide margin of appreciation in the field of local environmental issues provides for an even broader margin in the context of climate change. The Government observes that the Court has repeatedly recognized its fundamentally subsidiary role with respect to issues of environmental policies. The Court has recognized that national authorities are better placed to make the initial assessment of the "necessity" for an interference in cases raising environmental issues, including to determine the most appropriate environmental policies and individual measures while taking into account the needs of the local community, and that the State must therefore be allowed a wide margin of appreciation, see *Hatton* § 100; *Hardy and Maile* § 218; *Giacomelli* § 80; *Taşkın* § 116; and *Greenpeace E.V* on p. 5.

(142) Considering the global nature of the problem and the fact that greenhouse gas emissions are involved in most, if not all, human activities, there is an even wider latitude of available approaches to climate change than in the face of a local environmental issue. The choice between available measures and their precise timing are complex issues with society-wide implications, including a state's national budget and welfare state, at a larger scale than any one environmental issue. Considering the many options regarding measures and their consequences, including consequences for interests protected under the Convention, there is even greater reason – and need – for the choice of measures to remain within the margin of appreciation of the Contracting State to be influenced through participation in democratic processes.

(143) The Government moreover observes that a wide margin of appreciation with regard to each Contracting State's climate change measures would harmonize best with the Paris Agreement. The long-term temperature target is a collective target which may not be broken down into a designated 'fair share' for each Party to the Paris Agreement as a material obligation for that state. As explained in section 3.2.1, the State Parties to the Paris Agreement settled on the adoption of a "bottom up" approach, which leaves the determination of each Party's nationally determined contribution to the discretion of that State, in light of its highest possible ambition. As to the implementation of the Paris Agreement and the collective progress towards the temperature target, reference is made to section 3.2.1 and the description of the mechanisms of renewed NDCs, reporting and review by the designated treaty bodies. The Government also respectfully reiterates that the Court has no jurisdiction over the Paris Agreement and, in any case, that no breach of the Paris Agreement should be presupposed when its mechanisms have barely begun their functioning.

(144) In conclusion, if the Convention is to be considered applicable in cases such as the present, several traits of the Court's current case law will have to be reconciled with the global scale of the issues as well as the solutions. Consequently, should the Court consider that the Convention's provisions are applicable, the Government respectfully submits that the Court's review must be based on a very wide margin of appreciation. Climate change is a global problem offering a wider latitude of available measures, as well as a more complex interaction of societal interests, than the environmental issues previously assessed on the merits by the Court. Moreover, the substantive and procedural aspects will have to be tailored in order not to conflict with the fundamental principles of the Convention and the international climate change regime.

7.2.2 Substantive aspects

(145) The applicants' claim of a violation of Article 8 could be approached as an alleged violation of the State's negative obligations, presupposing that the impugned decision is perceived as an "interference" with alleged – substantive and/or procedural – climate-related rights under Article 8 § 2. The application is seemingly indifferent to whether it should be approached from the perspective of a negative or a positive obligation, cf. "additional submission" § 42.

(146) The applicants have also claimed that the State has "neglected to take reasonable and appropriate measures", cf. Additional submission § 60 et seq. This claim would be more appropriately considered under the State's positive obligations under article 8 § 1. However, this claim concerns environmental consequences of the respondent State's petroleum activities and policies in a more general manner, and thus falls outside of the scope before the Court, cf. also section 6.1 above.

(147) Should Article 8 be considered applicable, the Government respectfully submits that – owing to the States' margin of appreciation in ensuring a fair balancing of individual v. societal interests, this being a predominantly political and democratic exercise in the face of energy and climate policy – the Court should find that there has been no violation of the Convention. Notably, Norway has been in full compliance with its international commitments pertaining to climate change under the UNFCCC, Kyoto Protocol and the Paris Agreement, and has also introduced a number of general individual measures. Norway has been among the nations taking on ambitious legal obligations from the first period of the Kyoto Protocol, and has (over)fulfilled on its mitigation pledges in both the first and second period under the Kyoto Protocol, lasting until 2020. Norway has also undertaken an ambitious nationally determined contribution under the Paris Agreement, and was the third country in the world to submit an enhanced national determined contribution in line with the Paris Agreement. Such aspects were also emphasized by the Supreme Court in the concrete validity assessment under the substantive aspects of Article 112, cf. §§ 158-159, which is also of relevance to any substantive assessment under the Convention. Furthermore, reference is also made to section 7.3 describing how, in order to ensure compliance with the procedural aspects of Article 112 § 2, the Ministry of Oil and Energy henceforth will consider potential emissions from combustion of petroleum extracted and exported from Norway when deciding upon applications for development and operation of new petroleum fields.

Moreover, the majority of the Supreme Court has interpreted and applied the EU SEA Directive, and it falls outside of the scope of the Court's competence under the Convention to review this interpretation, cf. Article 32.

7.2.3 Procedural aspects

(148) With reference to the challenges outlined in section 7.2.1 above as to the application of the general principles from the Court's environmental case law, the Government observes that these challenges also apply for the procedural side of any assessment on the merits in a case such as this. It is clear from the Court's case law that the underlying reason for the Court's scrutiny of the decision-making process in cases concerning environmental issues is to ensure that due weight has been accorded to the interests of the individual, see, *inter alia*, *Hardy and Maile* § 217 with further references to *Hatton* § 99; *Giacomelli v. Italy*, no. 59909/00, 2 November 2006, § 79; and *Taşkın,* § 115. This is the underlying premise for the Court's assessment of the procedural aspects, concentrating on whether the decision-making process leading to measures of interference has been fair and has afforded due respect to the interests safeguarded to the individual by Article 8 (*Hardy and Maile* § 218 with further references; and *Taşkın* § 118). To this end, the Court will consider the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process and the procedural safeguards available (*Hardy and Maile* § 219; *Hatton* § 104; *Giacomelli*, § 82; and *Taşkın* § 118).

(149) In the present case, the applicants allege that the State has "neglected to ensure timely consideration of the Applicants' interests to enable those exposed to understand the risks and bring them to public debate", see "additional submission" §§ 62 et seq.

(150) The Government respectfully submits that this claim holds no merit. States must in the Government's view have a certain margin of appreciation with regard to how systems in terms of assessing and considering climate change impacts of decisions should be designed, as long as such impacts are considered prior to the decision on activities that may have an impact on climate change. As described thoroughly in the Supreme Court's judgment §§ 65-70 and 179-250, the Norwegian system ensures this.

(151) On this basis, the Government respectfully submits that there are no signs of a violation of the Convention in the present case, and the application should be rejected as manifestly ill-founded in accordance with Article 35 (3) and (4).

7.3 Article 2

(152) In the view of the Norwegian Government, the observations pertaining to Article 8 are also valid under Article 2 of the Convention (considering, however, that Article 8 has a broader scope in environmental cases than Article 2). Regarding the relevance of Article 2, the Government also invites the Court to take into account that addressing climate change unquestionably demands balancing exercises, a phenomenon which analytically pertains to the Convention's relative rights such as Article 8 and not the absolute rights such as Articles 2 and 3.

(153) The Supreme Court acknowledged that Article 2 may place positive obligations on the authorities, for instance in the context of hazardous business activities, cf. § 166. See in this regard also *Budayeva and Others v. Russia* no. 15339/02 et al., 20 March 2008 § 130.[37] In line with the Court's case law, the Supreme Court considers that there has to be a *"real and immediate"* threat to life in order for article 2 to be applicable, with reference to the Grand Chamber judgment 30 November 2004 *Öneryıldiz v. Turkey,* which considered a very different issue than climate change. This rendering of the test under article 2 – if at all relevant in the context of greenhouse gas emissions – is compatible with the Court's case law, see in addition *Budayeva and Others v. Russia*, no. 15339/02 et al., 20 March 2008 § 146 (*"the circumstances of the case … leave no doubt as to the existence of a threat to their physical integrity …"*), and *Kolyadenko and Others* no. 17423/05 et al, 28 February 2012, §§ 151 (*"clearly existed a risk to his or her life"*) and § 155 (*"the existence of an imminent risk to the lives of …"*).

(154) Applying this criterion to the case at hand, the Supreme Court noted – as did the High Court – that there is no doubt that the consequences of climate change *may* lead to loss of human life in Norway in the future through, for example, floods or landslides, cf. § 167.[38] The question under the Convention, however, was considered to be whether there was an *adequate link* between the impugned licences and the possible loss of human life so as to constitute a "real and immediate" risk.

(155) Even with this generalized point of departure, the Supreme Court considered that there was no sufficiently qualified risk, providing two reasons for this.[39] First, that there was uncertainty at the time of the decision as to whether, and to what extent, the impugned licences would actually lead to any emissions of greenhouse gases. Second, the possible climate impacts would in any case materialize quite far into the future. While reiterating the seriousness of the threats posed by climate change, the threat to life posed to inhabitants in Norway (generally) was not considered "real and immediate" within the context of the Convention. Consequently, the Supreme Court concluded that no grounds for a violation of article 2 could be found

(156) In the Government's view, this conclusion, when read in light of its premises, entails that Article 2 was considered inapplicable by the Supreme Court. The Government is also of the opinion that Article 2 is inapplicable to the present case, which also partly overlaps with the views on why neither the applicant organizations or individuals can be considered "victims" within the meaning of Article 34, see section 4.

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[37] *"This obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake (see Öneryıldız v. Turkey [GC], no. 48939/99, § 71, ECHR 2004-XII). In particular, it applies to the sphere of industrial risks, or "dangerous activities", such as the operation of waste collection sites in the case of Öneryıldız (ibid. §§ 71 and 90).»*

[38] Note that this section of the judgment is incorrectly translated ("will undoubtedly lead to loss of human life") in the unofficial translation attached to the application.

[39] See § 168.

(157) Based on its conclusions, the Supreme Court had no reason to consider whether the impugned decision had violated any potential obligations arising from Article 2.

(158) The general principles pertaining to Article 2 regard the immediate risks associated with hazardous activities. They do not fit well with a situation regarding the global, long-term, accumulated effects of modern societies. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life which the activity in question poses to citizens whose lives might be endangered by the inherent risks, see *Öneryıldız v. Turkey* [GC], no. 48939/99, 30. November 2004, §§ 71 and 89; *Budayeva and Others v. Russia*, no. 15339/02 et al., 20 March 2008 §§ 129 and 132; and *Kolyadenko and Others v. Russia*, no. 17423/05 and five others, 28 February 2012, §§ 157 and 159.

(159) In the alternative event that Article 2 is considered applicable, the Government submits that the general principles under Article 2 transpire from case law that is essentially different from the question of handling greenhouse gas emissions and global climate change. Consequently, they should not be applied without noting the fundamental differences between the situation for which they have been developed and the context of global climate change. Regulating greenhouse gas emissions in general, and this aspect of production and export of petroleum in particular, in order to reduce the risk of climate change related deaths is a much more complex exercise than the one transpiring from the case law concerning Article 2. The margin of appreciation as to which measures should be applied must consequently be wider, considering that these choices entail the balancing of societal interests against each other.

(160) In light of the foregoing, the Government submits that, in the event that Article 2 is considered applicable in the present case, there has been no violation of any potential obligations stemming from Article 2 on account of the impugned decision. The Government here refers to its observations regarding Article 8, cf. section 7.2.2.

8 ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND/OR 8 OF THE CONVENTION, CF. THE COURT'S QUESTION 4 (D)

(161) Article 13 of the Convention guarantees that there are domestic remedies available that ensure the enforcement of the Convention's rights and freedoms, notwithstanding how these norms are established in the domestic legal systems. The provision requires the existence of a domestic remedy enabling a review of an arguable claim relating to the Convention. With reference to *Hatton and Others v. the United Kingdom* [GC] 2003, the applicants claim that Article 13 has been violated on the basis that the Norwegian courts allegedly did not assess the merits of the Convention claims in full and based on the Court's case law, and that the assessment was superficial and seriously erroneous.

(162) The Government respectfully submits that this claim holds no merit. The Government recalls that the scope of review in the domestic court proceedings in *Hatton*, was "limited to the classic English public-law concepts, such as irrationality, unlawfulnesss and patent

unreasonableness", and notably "did not at the time allow consideration" of whether the claimed increase in night flights represented a "justifiable limitation" on the right to respect for the private and family lives or the homes of those "who live in the vicinity of Heathrow Airport".

(163) In the Government's view, the special circumstances of the *Hatton* case are essentially different from the present case, and the case is therefore not relevant when considering whether Article 13 has been complied with in the present case. Articles 2 and 8 of the Convention were introduced as new and alternative grounds for invalidity before the High Court of Appeal.[40] The domestic courts on two levels – first the High Court of Appeal then the Supreme Court sitting as a plenary court – then considered the validity of the impugned decision on the grounds put forth by the organisations in relation to the Convention, essentially an *actio popularis* allowed by the domestic courts under a special provision in the Dispute Act. The domestic court proceedings were thus fully in line with the approach the organisations chose for their lawsuit. The proceedings lasted for several days, both before District Court, the High Court and the Supreme Court. The Government fails to see how there could be any grounds for a violation of Article 13, and notes that the applicants' submissions to this end before the Court are limited.

(164) In addition, occasioned by the applicants' criticism of the domestic courts, the Government finds it pertinent to emphasize in general that the scope and depth of the domestic courts' assessments will to a certain degree be a reflection of the plaintiffs' own submissions before the courts. In the case before the domestic courts, the organizations' main focus lay on the Norwegian constitutional provisions and notably not the Convention, see among others § 3 of the Supreme Court's judgment, describing that "the crux of the matter is the interpretation of Article 112 of the Constitution". The Convention was not part of the grounds for appeal to the Supreme Court, but Articles 2 and 8 were invoked as an alternative basis for invalidating the impugned decision during the hearing, see § 6 of the Supreme Court's judgment. This provides an important context for considering the applicants' claim of a violation of Article 13 based on what the applicants characterize as a "superficial and seriously erroneous" assessment, but what could rather be seen as a reflection of the limited scope of the applicant organizations' own arguments before the Supreme Court.

(165) Based on the above, the Government respectfully invites the Court to hold that the complaint regarding Article 13 is manifestly ill-founded. Alternatively, the Court should find that there has been no violation on account of Norway in the present case, with reference to the sections above.

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[40] See the Supreme Court's judgment § 11.

9 ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2 AND/OR 8 OF THE CONVENTION, CF. THE COURT'S QUESTION 4 (C)

(166) The application states two grounds for a violation of Article 14 of the Convention. First, it is alleged that applicants 4-6 are discriminated against as members of the indigenous Sámi community.[41] Second, it is alleged that applicants 1-6, being of the ages 13-25 years old, are discriminated against based on their age.

(167) The Government respectfully submits that the applicants are not subject to discrimination. The impugned decision does not give rise to any differentiated treatment.

(168) The Government reiterates that *the individual applicants* were not party to the proceedings before the domestic courts. The *organisations* did not argue before the domestic courts 'in essence' that young people were subjected to *discrimination based on age*. Although the organizations emphasise that young people would bear the burden of climate change, this is not tantamount to a treatment amounting to discrimination pursuant to the Convention Article 14.

(169) The fact that certain general impacts on society may grow more prevalent over time, is not sufficient to constitute discrimination within the meaning of Article 14 of the Convention. If this were sufficient to amount to discrimination on the basis of age, as an "other status", one could imagine a whole range of complaints of violations of Article 14 on the grounds that one generation would 'miss out' on positive societal developments, while another generation would argue that it would have to carry burdens that other generations have been free of. Considerations as to which generation is more privileged is not a legal matter, but rather the topic of social and philosophical discussions. The argument as to which generation is favoured by any given policy will be subjective and hard to assess in a legal context. In Norway, so far at least, each new generation has arguably had better circumstances to enjoy their life – including their freedoms and rights enshrined in the Convention – than every previous generation. That climate change will place a strain on resource management and require political prioritization between groups, is quite certain. However, the impugned decision does not treat the applicants differently from persons in an analogous or relevantly similar situation, see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, 16 March 2010 § 61. One of the characteristics of the impugned domestic decision, as well as greenhouse gas emissions and climate change in general, are inherently indiscriminate, in that they target no one and affect everyone.

(170) Regarding the claim of discrimination based on applicants' 4-6' association with a national minority, the Government first recalls that this was not argued even in essence before the domestic court, and therefore this claim falls outside the scope of the case before the Court.

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[41] See the applicants' additional submissions § 67. The Government observes, however, that there seems to be no mention of any connection to the Sámi community in the individual statement of Applicant 5.

In any case, the Government notes that the claim of a minority-based discrimination as a result of the 23rd licensing round is substantiated only to a very limited degree.

(171) Based on the above, the Government respectfully invites the Court to hold that the complaint regarding Article 14 is manifestly ill-founded. Alternatively, the Court should find that there has been no violation on account of Norway in the present case, with reference to the sections above.

10 CONCLUSION

(172) Based on the abovementioned considerations, the Government respectfully invites the Court to conclude the following:

i. That the complaint is inadmissible, as the complaint is incompatible with the Convention's provisions and/or manifestly ill-founded; or

ii. That there has been no violation of the Convention.

Oslo, 26 April 2022

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acting agent

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